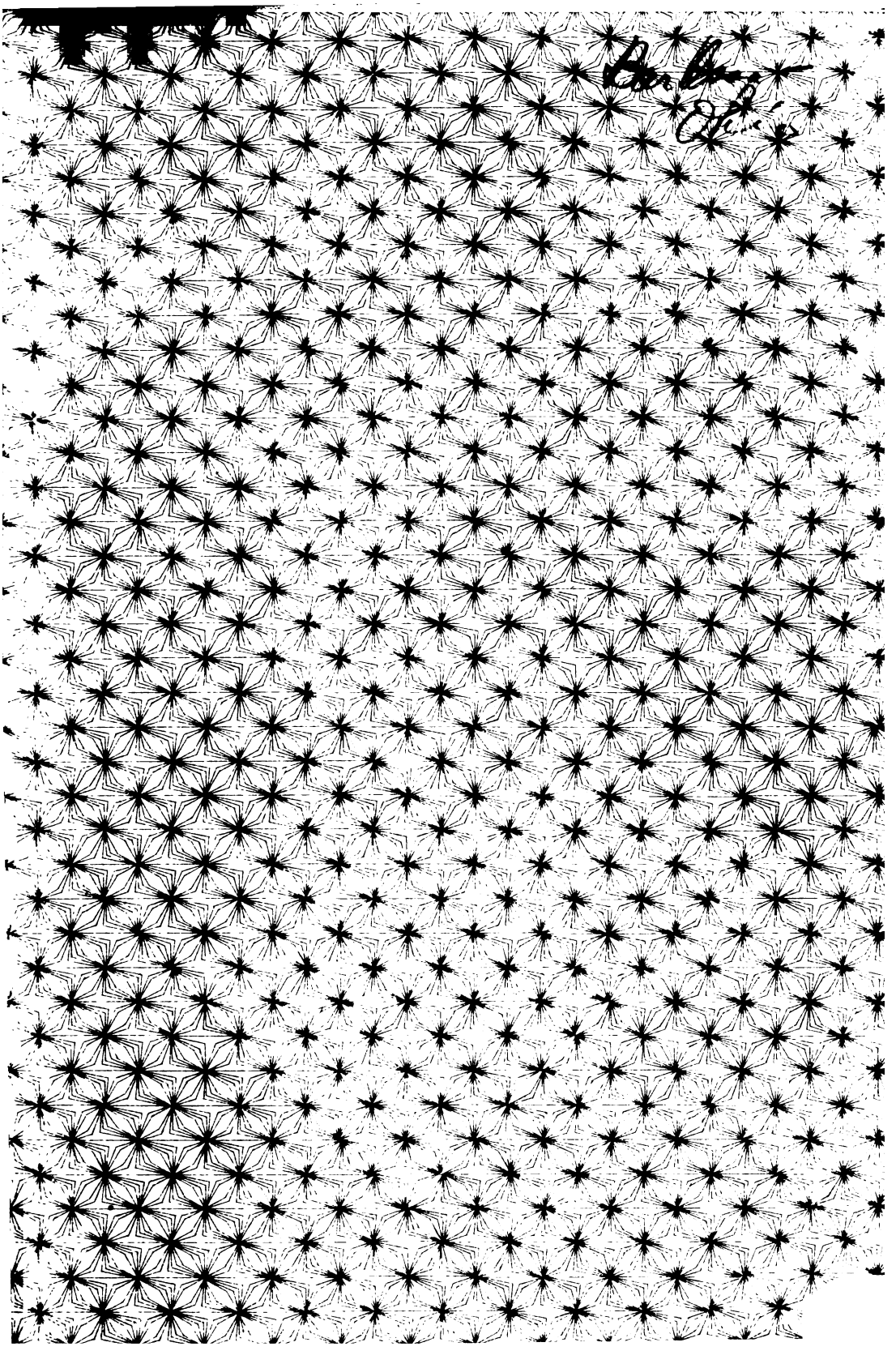

OHIO
STATE BAR ASSOCIATION

VOLUME XXIX

PROCEEDINGS

OF THE

Twenty-ninth Annual Session

OF THE ASSOCIATION

HELD AT

HOTEL VICTORY, PUT-IN-BAY, OHIO

JULY 7, 8 AND 9, 1908

CONSTITUTION, BY-LAWS, PROCEEDINGS,
LIST OF OFFICERS, MEMBERS, ETC.

COLUMBUS, OHIO
THE BERLIN PRINTING CO.
1908

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The Ohio State Bar Association

CONSTITUTION

Adopted July 8, 1880 (Vol. 1, p. 9.

I. NAME.

This Association shall be known as "The Ohio State Bar Association."

II. OBJECT.

The Association is formed to advance the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to uphold integrity, honor and courtesy in the legal profession, to encourage thorough liberal legal education and to cultivate cordial intercourse among the members of the bar.

III. MEMBERSHIP.

The members of the bar attending this Convention as delegates this eighth day of July, 1880, are hereby declared to be members of this Association, provided they shall, during the present session, pay the admission fee and sign this Constitution. Any member of the bar of good standing, residing or practicing in the State of Ohio, may become a member of the Association upon nomination and vote, as hereinafter provided.

IV. ELECTION OF MEMBERS.

All nominations for membership shall be made by the Committee on Admissions, and must be transmitted in writing to the President and by him reported to the Association, and if any member demands a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot. Several nominees

may be voted upon on the same ballot, and in such a case the placing of the word "no" against any name or names upon the ticket shall be deemed a negative vote against such name or names and against those only. One negative vote in every five shall suffice to defeat an election. (Amended July 12, 1901. Vol. 22, p. 72, 91.)

V. OFFICERS.

The officers of the Association shall be a President, who shall deliver the annual address and be ineligible for a second term; one Vice President from each judicial district reported by membership in the Association; a Secretary and a Treasurer. All of these shall be elected at the annual meeting and hold their offices till the next annual meeting of the Association and until their successors are elected.

VI. COMMITTEES.

The President shall, with the approval of the Association, appoint the following Standing Committees: An Executive Committee, a Committee on Admissions, a Committee on Judicial Administration and Legal Reform, a Committee on Legal Education, a Committee on Grievances and a Committee on Legal Biography; and each Standing Committee shall be composed of one member from every judicial district represented in the Association. A majority of the members of every committee who may be present at a meeting of the Association shall constitute a quorum of such committee for the purposes of such meeting.

Every committee shall, at each annual meeting, report in writing a summary of its proceedings since the last annual report, together with any suggestions deemed suitable and appertaining to its powers, duties or business. A general summary of all such annual reports and of the proceedings of the annual meetings shall be prepared and printed by and under the direction of the Executive Committee, together with the Constitution, By-Laws, names and residences of officers, standing committees and members of the Association, as soon as practicable after each annual meeting.

VII. FINAL ACTION.

No action of the Association of a permanent nature or recommending changes in law or the administration of justice, shall be final until approved by the Standing Committee, to which the same shall be referred by the Association.

VIII. PRESIDENT.

The President or, in his absence, the senior Vice-President shall preside at all meetings of the Association, and the President shall deliver an address at the opening of the meeting next after his election.

IX. EXECUTIVE COMMITTEE.

The President and Secretary shall be *ex-officio* members of the Executive Committee. This Committee shall manage the affairs of the Association, subject to the provisions of the Constitution and By-Laws, and shall be vested with the title to all its property as trustees thereof, and shall make By-Laws for the Association, subject to amendment by the Association.

X. COMMITTEE ON ADMISSIONS.

The proceedings of this Committee shall be deemed confidential and shall be kept secret, except so far as written or printed reports of the Committee shall be necessarily and officially made to the Association.

XI. COMMITTEE ON JUDICIAL ADMINISTRATION AND LEGAL REFORM.

It shall be the duty of the Committee on Judicial Administration and Legal Reform to take record of all proposed changes of the law and to recommend such as may be, in their opinion, entitled to the favorable influence of the Association; and further, to observe the working of the judicial system of the State; to collect information with reference thereto and to recommend such action as they may deem advisable.

XII. COMMITTEE ON LEGAL EDUCATION.

It shall be the duty of the Committee on Legal Education to examine and report what change it is expected to propose in

the system of legal education and of admission to the practice of the profession in the State of Ohio.

XIII. COMMITTEE ON GRIEVANCES.

The Committee on Grievances shall receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law and the administration of justice and report the same to the Association with such recommendations as they may deem advisable.

The proceedings of this Committee shall be deemed confidential and kept secret, except so far as reports of the same shall be necessarily and officially made to the Association.

XIV. COMMITTEE ON LEGAL BIOGRAPHY.

The Committee on Legal Biography shall provide for the preservation among the archives of the Association of suitable written or printed memorials of the lives and characters of deceased members of the Ohio Bar and procure and report to the next annual meeting a short biographical sketch of each member whose death shall have been reported at any annual meeting. (Amended December 28, 1886. Vol. 7, p. 65.)

SECRETARY.

The Secretary shall keep a record of the proceedings and conduct the correspondence of the Association and perform the usual duties of such office.

TREASURER.

The Treasurer shall collect and by order of the Executive Committee disburse all funds of the Association and keep regular accounts, which, at all times, shall be open to the inspection of any member or members of the Executive Committee.

ANNUAL MEETING.

This Association shall meet annually at such time and place as the Executive Committee may select and those present at such meeting shall constitute a quorum.

DUES.

The admission fee will, in all cases, be $2, which shall include the dues of the applicant to December 31st of the year in which he is admitted. The annual dues of the members shall be $2, to be paid yearly on or before the first day of the annual meeting of the Association, and after each annual meeting the Treasurer shall notify each member in arrears for dues of the amount due; and any member who shall remain in default for dues until the close of the annual meeting next following such default shall be suspended and dropped from the rolls and shall not be reinstated until all back dues are paid; provided, however, that in case such back dues amount to more than $5, such members may, upon recommendation of the Committee on Admissions, be reinstated on payment of the sum of $5. (Amended December 28, 1886, Vol. 7, p. 65; July 15, 1892, Vol. 13, p. 91, and July 8, 1902, Vol. 23, p. 26.)

AMENDMENTS.

This Constitution may be altered or amended by a vote of a majority of the members present at any annual meeting, with the approval of the Executive Committee.

BY-LAWS

The following By-Laws, prepared by the Sub-Committee appointed for that purpose, were adopted in the month of September, 1881, by the following indorsement written thereon:

APPROVED.

The undersigned members of the Executive Committee hereby consent that a meeting of the Committee to consider the within By-Laws be dispensed with, and that said By-Laws be considered as adopted and be published by the Secretary with his report.

RUFUS KING,
JOHN W. HERRON,
J. T. HOLMES,
L. J. CRITCHFIELD,
GEO. W. HOUCK,
JOHN F. BROTHERTON,
WARREN P. NOBLE,
GEO. W. GEDDES,
CHAS. H. GROSVENOR,
D. A. HOLLINGSWORTH,
WM. UPSON.

I. The Executive Committee, at its first meeting after each annual meeting of the Association, shall select some person to make an address at the next annual meeting on the life and services of any deceased member of the bench or bar of Ohio of eminence or other subject; and also not exceeding five members of the Association to read papers.

II. The Order of Exercises at the annual meeting shall be as follows:

(a). Annual Address of the President.

(b) Report of Committee on Admission and Election of Members.
(c) Report of Secretary.
(d) Report of Treasurer.
(e) Reports of Standing Committees:
Executive Committee.
On Judicial Administration and Legal Reform.
On Legal Education.
On Grievances.
On Legal Biography.
(f) President's call upon each Judicial District for names of deceased members.
(g) Reports of Special Committees.
(h) The Nomination of Officers.
(i) The Appointment of Standing Committees.
(j) Miscellaneous Business.
(k) The Election of Officers.

The address to be delivered by a person invited by the Executive Committee shall be at the morning session of the second day of the annual meeting, and the reading of papers by the members appointed by the Executive Committee shall be on the same day, unless the Executive Committee shall designate some other time for the address and reading of papers. After the reading of each paper an opportunity shall be given for discussion on the topic of the paper.

The Executive Committee shall publish some days in advance of each annual meeting, a statement of the person who is to deliver the address, and the persons who are to read papers, and the subject of each. (Amended December 28, 1886. Vol. 7, p. 65.)

III. No person taking part in a discussion shall speak more than ten minutes at a time or more than twice on one subject. A stenographer shall be employed at each annual meeting.

IV. At any of the meetings of the Association, members of the bar of any foreign country or of any state other than Ohio, who are not members of the Association, may be admitted to the privilege of the floor during such meetings.

V. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the Committees, and all proceedings at the annual meeting shall be printed, but no other address made of paper read or presented shall be printed, except by order of the Executive Committee. Extra copies of reports, addresses and papers read before the Association, may be printed for the use of their authors, not exceeding one hundred copies to each of such authors.

The Executive Committee, as a Committee on Publications, shall meet within one month after each annual meeting at such time and place as the Chairman shall appoint.

VI. The terms of office of all officers elected at any annual meeting shall commence at the adjournment of such meetings; but the terms of office of the members of the several committees appointed by the President shall commence immediately on their appointment.

VII. Each committee shall elect its own officers, whose terms of office shall commence on their election and continue until the appointment of a new committee; and each Standing Committee shall continue until its successor shall be appointed.

VIII. All Standing Committees shall meet on the day preceding each annual meeting at the place where the same is to be held, at such hour as the respective chairmen shall designate.

IX. Special meetings of any committee shall be held at such times and places as the chairmen thereof may appoint. Reasonable notice shall be given by him to each member by mail.

X. The Treasurer's report shall be examined and audited annually, before its presentation to the Association by two members to be appointed by the Chairman of the Executive Committee.

MEMORANDA.

All Judges and ex-Judges of the Supreme Court of Ohio are *ex-officio* members of this Association. I Rep., 17.

All Judges and ex-Judges of the United States Court who are members of the Ohio bar are *ex-officio* members of this Association. VI. Rep., 157.

At each annual meeting of the Association a committee, consisting of three members, to be styled the Committee on Railroads and Transportation, shall be appointed by the President of the Association, whose duty it shall be, at least six weeks prior to the next ensuing annual meeting, to negotiate and complete all practicable arrangements for reduced rates of travel to those attending, and through its Chairman, at least four weeks before the annual meeting, advise the Chairman of the Executive Committee and the Secretary of the Association of the arrangements made so that the same may be printed in the notices and programs sent out to members in advance of the meeting. (Adopted from Secretary's report, July 18, 1889, X Rep., 23.)

Resolved, That all applications for membership shall be accompanied with the membership fee, and upon default so to do, such application shall be returned without delay to such applicant by the Secretary of the Association of Committee on Admissions. (Adopted by the Association July 18, 1890, XI Rep., 124.)

AS TO DISTRIBUTION OF ANNUAL REPORTS.

To the members of the Association the volume of the reports of the proceedings held prior to the date of their admission shall be twenty-five cents, except the first four reports bound in one book, which shall be $1.25 for the book.

To all other persons, excepting to law libraries and the exchange list of the Association, the price per volume shall be fifty cents, and for the four reports, bound in one book, the price shall be $2.00.

The payment of the annual dues to entitle each member so paying to the volumes issued after the date of his membership.

(Adopted July 8, 1903. Vol. 24, page 15.)

Report of Proceedings

OF

The Ohio State Bar Association

The Twenty-Ninth Annual Session

Held at Hotel Victory, Put-in-Bay, July 7, 8 and 9, 1908

FIRST DAY

The twenty-ninth annual meeting of the Ohio State Bar Association convened at the Hotel Victory, Put-in-Bay, Ohio, on July 7, 1908, at 2 o'clock p. m., with Hon. D. A. Hollingsworth, of Cadiz, the Vice President of the Association, selected by the Executive Committee to preside in the absence of Hon. Thos. B. Paxton, of Cincinnati, President of the Association, and Mr. Edward B. McCarter, of Columbus, as Secretary.

Hon. C. B. Heiserman, of Urbana, of the Executive Committee, after calling the convention to order, said: "This last year has been a chapter of accidents. In the first place, the President-elect of the Association, Hon. Thos. B. Paxton, of Cincinnati, because of other arrangements he had made for this summer, declined the honor which had been conferred upon him by the Association at its last meeting. The Executive Committee selected Hon. D. A. Hollingsworth, the senior Vice President, to deliver the annual address and to preside over the deliberations of this meeting. Then F. J. Mullins, of Salem, who has so long and so successfully served as Chairman of the Executive Committee, on account of illness was compelled to resign, and C. O.

Hunter, of Columbus, was elected Chairman of the Executive Committee last February. Judge Hunter since that time has labored most zealously in season and out of season for the success of this meeting, and has arranged a splendid program. And now this morning, the Secretary received a telegram from Judge Hunter to the effect that sickness will not permit him to attend this meeting. The Executive Committee, therefore, has asked me to call this Association to order and to introduce the Vice President and the speaker of the afternoon. I take great pleasure, therefore, in introducing the Hon. D. A. Hollingsworth, of Cadiz, Ohio. (Loud applause.)

Hon. D. A. Hollingsworth then delivered his address.

(For President's address, see Appendix.)

THE PRESIDENT: I have an announcement to make. Mr. R. K. Ramsey, of Sandusky, wishes to invite the Association to take a moonlight sail Wednesday evening.

Mr. R. K. Ramsey, of Sandusky, then extended an invitation in behalf of Hon. E. B. King, of Sandusky, and himself, to the members of the Association and their friends and guests to take a moonlight ride Wednesday evening on the steamer Arrow to Cedar Point, where the Association would be entertained for several hours and then the steamer Arrow would return them to Put-in-Bay. Mr. Ramsey's kind invitation was unanimously accepted by the Association.

THE PRESIDENT: The report of the Secretary is next in order.

Mr. Edward B. McCarter, of Columbus, then read his report as Secretary of the Association, which is as follows:

SECRETARY'S REPORT

PUT-IN-BAY, Ohio, July 7, 1908.

To the Ohio State Bar Association:

GENTLEMEN I herewith submit my annual report as secretary for the past year. The proceedings of the annual meeting for the year 1907 were published under the direction of the Executive Committee and a copy sent to each member of the Association last October. The preparation of the proceedings of the Association for publication is much more burdensome and takes a great deal

more of the secretary's time than when the Association published a complete stenographic report of the meetings as the secretary must edit the proceedings. I know whereof I speak, as the 1904 and 1905 Annuals contain the complete stenographic report of those meetings and the 1906 and 1907 Annuals were edited by the secretary. The 1907 report has also been sent to most of the State Bar Associations and to a number of universities and libraries, and each year there is a wider demand for our annuals.

Mr. F. J. Mullins of Salem, the efficient chairman of the Executive Committee for a number of years, tendered his resignation as chairman, owing to ill health, and the Executive Committee, in February, unanimously elected Mr. C. O. Hunter, of Columbus, to the chairmanship.

The Association, through its secretary, mailed to each lawyer in the state the program for the 1908 meeting with the report of the Judicial Administration and Legal Reform Committee, a circular from the Executive Committee calling attention to the benefits of the Association of the lawyers of the state, and a blank application to membership, and the Committee will be greatly disappointed if hundreds of lawyers do not enroll themselves as members, as this is the first time in its history that programs have been mailed to all the lawyers of Ohio. The Executive Committee wish to announce that they have endeavored to reach the complete bar of the state in this distribution, and from the numerous applications the secretary has received and the interest already manifested in this meeting, they hope to make the Twenty-ninth Annual Meeting the most successful ever held. The Association should have a membership of at least two thousand out of the six thousand lawyers of Ohio.

I wish to call the attention of the members to the meetings of the several judicial districts at the time set on the program for the appointment of members of standing committees and the Committee on Nomination of Officers, and the organization of the committees so they will be able to report at the proper time.

I desire to thank the officers of the Association, the Executive Committee and the members for their co-operation during the past year.

Respectfully submitted,

EDWARD B. MCCARTER, Secretary.

THE PRESIDENT: The report of the Secretary will be regarded as approved unless I hear an objection. It is so ordered.

THE PRESIDENT: Next in order is the report of the Treasurer.

Mr. Clement R. Gilmore, of Dayton, then read his report as Treasurer:

TREASURER'S REPORT

The Treasurer charges himself as follows:

				$ 210 65
To balance on hand, July 9, 1907				
" receipts.	Reinstatement 1 member	$ 5 00		
	Admission fees, 46 members	92 00		97 00
	Membership dues, 1906	$ 18 00		
	" " 1907	1240 20		
	" " 1908	16 00		1274 20
				$1581 85

Credits are due on orders paid, as follows:

1907				
July 12.	F. J. Mullins, expenses 1907 meeting	$ 23 50		
	E. B. McCarter, expenses 1907 meeting	9 00		
	C. R. Gilmore, Treas., salary to July 9, 1907	100 00		
17.	E. B. McCarter, expenses to June 14, 1907	45 00		
Sept. 5.	The Groneweg Printing Co., postage and printing	39 36		
19.	C. O. Hunter, expenses 1907 meeting	14 20		
26.	E. B. McCarter, expenses 1907 report	40 00		
Oct. 11.	E. B. McCarter, salary 1907-8	200 00		
11.	Anna L. Bower, expenses 1907 report	10 00		
Dec. 26.	American Express Co., delivery 1907 report	47 85		
	Armstrong & Okey, stenographers, 1907 meeting	75 00		
	Spahr & Glenn, printing to date	60 50		
	E. B. McCarter, incidentals	15 00		
1908				
Jan. 7.	The Berlin Ptg. Co., printing 1907 report	512 50		
	C. R. Gilmore, expenses to date	16 75		
Feb. 15.	The Groneweg Printing Co., postage and printing	15 87		
	S. M. Dunlap, delivery 1907 reports	23 57		
	E. B. McCarter, incidentals	10 00		
April 17.	E. B. McCarter, express, postage and incidentals	15 00		
June 13.	E. B. McCarter, postage	100 00		
July 1.	C. R. Gilmore, expenses to date	26 55		
6.	Cash on hand	182 20		$1581 85

The following is a summary of the foregoing:

Disbursements.

Expenses of 1907 annual meeting	$ 121 70	
Preparing printing and distributing 1907 report	618 92	
Secretary's salary, 1907-8	200 00	
Treasurer's salary, 1906-7	100 00	
" clerk hire	24 10	
Postage	144 00	
Stationery and printing	83 13	
Miscellaneous expense of Secretary	100 00	
" " Treasurer	7 80	
	$1399 65	
Cash on hand	182 20	$1581 85

The deaths of eight members have been reported to the Treasurer since the last annual meeting.

The names of these members will be given in the report of the Chairman of the Committee on Legal Biography.

The resignations of five members have been received as follows:

George D. Copeland.....Marion
Sherman M. Granger.....Zanesville
B. B. Kingsbury.....Defiance
T. T. McCarty.....Canton
Bartlett C. Shepherd.....Painesville

Nineteen members were dropped for non-payment of dues.

Forty-eight members are in default for dues of 1907, and unless payment is made by the close of this annual meeting will be suspended and dropped from the rolls.

The following is a statement of the membership of the Association for the past year:

Total number of members, July 9, 1907	708	
Admitted and reinstated at 1907 meeting	47	
		755
Deaths reported to Treasurer	8	
Resignations	5	
Suspended for non-payment of dues	19	32
Total membership, July 7, 1908		723

Respectfully submitted,

CLEMENT R. GILMORE,
Treasurer.

Put-in-Bay, Ohio, July 7, 1908.

PUT-IN-BAY, OHIO, July 7, 1908.

To the Ohio State Bar Association:

GENTLEMEN—Your committee appointed to audit the books of the Treasurer of the Association beg leave to report that we have carefully gone over the receipts and vouchers of expenditures and find the same to have been kept in a satisfactory manner, and that the report of the Treasurer as submitted is correct.

Respectfully submitted,

LEE STROUP,
J. G. OBERMEYRE.

THE PRESIDENT: Gentlemen, you have heard these reports, and if there are no objections, they will stand approved.

THE PRESIDENT: We will next hear the report of the Committee on Admissions, of which Judge C. F. Malsbary, of Cincinnati, is Chairman.

JUDGE MALSBARY: As Chairman of the Committee on Admissions, I submit the following applications for admission to this Association, and move you, Mr. President, that these gentlemen be elected members of this Association.

Motion unanimously adopted, and the following were duly elected to membership:

Eugene Adler	Cincinnati
William T. Arnos	Cleveland
Alfred G. Allen	Cincinnati
S. P. Axline	Ada
Henry Baer	Cincinnati
Thorne Baker	Cincinnati
Henry S. Ballard	Columbus
Edward Barton	Cincinnati
Henry A. Beckerman	Cleveland
James W. Bell	Cambridge
C. E. Blanchard	Columbus
August H. Bode, Jr.	Cincinnati
H. C. Bolsinger	Cincinnati
William H. Boyd	Cleveland
W. C. Carman	Youngstown
Jerome D. Creed	Cincinnati
Jay W. Curts	Cincinnati
Lewis Grant Davis	Dayton
O. E. Davis	Columbus

Ben R. Dolson.....Lancaster
Thomas H. Dolson.....Lancaster
Charles T. Dumont.....Norwood
Clifford W. Fuller.....Cleveland
Wm. A. Geoghegan.....Cincinnati
Geoffrey Goldsmith .....Cincinnati
Thomas E. Green.....Cleveland
N. M. Greenberger.....Akron
Nathan Gumble .....Columbus
Harvey E. Hammar.....Painesville
W. S. Hanna.....Millersburg
J. W. Heintzman.....Cincinnati
H. H. Hostetler.....Canal Dover
Simeon H. Hurtig.....Cincinnati
Charles J. Inott.....Cincinnati
Eldon R. James.....Cincinnati
Clyde P. Johnson.....Cincinnati
Theodore A. Johnson.....Youngstown
Clarence L. Jones.....Cleveland
Frank H. Kerr.....Steubenville
Thos. M. Kirby.....Cleveland
Charles Koonce, Jr.....Youngstown
Richard H. Lee.....Cleveland
Walter D. Meals.....Cleveland
Marion D. Merrick.....Toledo
Frank R. Morse.....Cincinnati
John MacGregor, Jr.....Cleveland
C. W. McCleery.....Lancaster
W. S. McConnaughey.....Dayton
L. F. McGrath.....Cleveland
Wm. C. McLean.....Cincinnati
A. G. Newcomb.....Cleveland
Sam H. Nicholas.....Coshocton
Fred E. Niederhelman.....Cincinnati
Benton S. Oppenheimer.....Cincinnati
F. M. Patterson.....Ashland
Province M. Pogue.....Cincinnati
Thos. L. Pogue.....Cincinnati
Richard A. Powell.....Cincinnati
Charles J. Pretzman.....Columbus
W. D. Pudney.....Cleveland
E. C. Pyle.....Cincinnati
O. J. Renner.....Cincinnati
Philip Renner.....Cincinnati

Rees G. Richards.....Steubenville
Walter A. Ryan.....Cincinnati
J. H. Sampliner.....Cleveland
Mortimer L. Sampliner.....Cleveland
Henry J. Schiller.....Sandusky
Joseph B. Schroeder.....Cincinnati
Murray Seasongood .....Cincinnati
John C. Shea.....Dayton
W. C. Shepherd.....Hamilton
Murray M. Shoemaker.....Cincinnati
James J. Smiley.....Cincinnati
Wells K. Stanley.....Cleveland
Chas. H. Stephens.....Cincinnati
Joseph L. Stern.....Cleveland
James B. Swing.....Cincinnati
James W. Tarbell.....Georgetown
Charles H. Urban.....Cincinnati
A. J. Ullman.....Cincinnati
Charles A. J. Walker.....Cincinnati
George C. Wing.....Cleveland

On motion unanimously adopted the following telegram: "The Ohio State Bar Association sends greetings and hope for a speedy restoration of health" was sent by the Secretary to James O. Troup, of Bowling Green, Thomas B. Paxton, of Cincinnati, C. O. Hunter, of Columbus, F. J. Mullins, of Salem, and J. J. Moore, of Ottawa.

THE PRESIDENT: The report of the Executive Committee is next in order, and Judge C. B. Heiserman, as the acting Chairman of that Committee, will make the report.

HON. C. B. HEISERMAN: I do not know that the Executive Committee have any special report to make. I think the proceedings of this convention will constitute the best report the Executive Committee can make.

THE PRESIDENT: The next report is that of the Committee on Judicial Administration and Legal Reform, of which Hon. A. D. Follett, of Marietta, is Chairman.

HON. A. D. FOLLETT: Mr. President and Gentlemen: As the report of this Committee is in print and is presumably in the hands of each gentleman here present, I think it is unnecessary to

read that report, as it comes up for consideration tomorrow. I do wish to take this opportunity of saying this as to the practical accomplishments of that Committee, and ask you to consider the matter between now and tomorrow. Two years ago that Committee met at the expense of some time and money on the part of its members, and again one year ago. Each time that Committee, with a good deal of thought, framed up a report and presented it to this convention, had its recommendations adopted after some modification, and one year ago, at the suggestion of our Committee, for the purpose of making the acts of the Association of some effect, a special Committee was appointed by the President to take charge of each recommendation which this Association had adopted. Not one single one of those items of recommendation as to legislation was ever even presented, so far as I can learn, to the General Assembly. If I am incorrectly informed, I will be glad to know it, but so far as I can learn in not a single instance did a single Committee appointed one year ago to see that our recommendations were presented to the Legislature in the form of bills, even do so much as have a bill drawn to be introduced. Now if this Committee is to be continued, if its members are to spend their time and the Association to spend its time in recommending legislation, let us try to take up some mode by which we can have action. I will ask this Association to try to adopt some new method of making the recommendations of the Association and the results of the discussion on the part of the members of the Association practically effective by presenting them to the General Assembly for its consideration.

REPORT OF COMMITTEE ON JUDICIAL ADMINISTRATION AND LEGAL REFORM

To The Ohio State Bar Association:

Your Committee on Judicial Administration and Legal Reform submits the following report:

1. We recommend that the Divorce Laws of the State be amended as follows:

(a) By providing that in all uncontested cases counsel shall be appointed by the court to represent the non-contesting party.

(b) That no divorce shall take effect until entered and shall not be entered until after the expiration of six months from the announcement of the decision allowing the divorce; and until so entered such decree shall be within the absolute control of the court in which the cause is pending.

(The above represents the action of the Association in 1906 after amending the report of your Committee for that year. A Bill introduced in the last General Assembly so amending the law failed of final passage.)

2. The General Assembly having failed to act, we renew the following recommendation of your Committee of 1907, adopted by the Association, that Section 550 Revised Statutes of Ohio be amended in the following particulars:

"By providing that a second or subsequent affidavit for disqualification must set forth the facts claimed as showing the alleged 'interest, bias, prejudice or disqualification,' insofar as in the nature of the case this is practicable; that interested counsel be notified promptly by the clerk of the filing of such second or any subsequent affidavit and have the right to contest the truth of its allegations by filing notice asking for a hearing; that if such request for hearing be filed, the supervising judge of the district or 'judge of some other subdivision who is qualified' to whom notice is given by the clerk of the filing of the affidavit, shall forthwith fix a time and place when the charges made in the affidavit shall be heard, of which hearing all interested counsel shall have proper notice and at which hearing all parties interested may offer testimony by affidavit, deposition or production of witnesses; the decision of the judge conducting the hearing as to the existence of the alleged 'interest, bias, prejudice or disqualification,' shall be final and conclusive, shall be entered by the clerk upon the journal of the court where the 'cause or matter' is pending, and should such adjudication be adverse to the alleged 'interest, bias, prejudice or disqualification,' the cause or matter may proceed as though the affidavit had not been filed."

3. For the last three years this Association has concurred in the following recommendation, which we renew, no legislative action having been taken thereon:

We recommend that the term of office of the Judges of the Supreme Court be lengthened.

4. We advise that legislation be enacted making ineligible to employment as counsel by the receiver in any action, of any

person, or the partner of any person, who is or has been employed by any party to the same, either in connection therewith or with the issues involved therein.

5. We recommend that the Association debate the question of the advisability of amending the constitution of the State so as to provide for the appointment of all judges by the Governor, with the advice and consent of the Senate, their tenure of office to be either for a fixed term or during good behavior.

6. We advise that Section 453 of the Revised Statutes be amended so as to repeal that clause of said Section which disqualifies a judge of the Circuit Court from sitting in a trial, or hearing upon the filing of and affidavit by a party to the cause or matter, or by the counsel of such party.

7. We recommend that subdivisions 5 and 7 of Section 5190 Revised Statutes be amended to read as follows:

5. When the evidence is concluded, either party may present written instructions to the court on matters of law, and request the same to be given to the jury, whereupon the court shall before the argument designate which, if any, of such instructions will be given to the jury, and any such instructions, so designated to be given, shall be given by the court in connection with the general charge to the jury at the close of the argument, and not otherwise.

7. The court after the argument is concluded shall, before proceeding with other business, charge the jury, the charge shall be reduced to writing by the court if either party before the argument to the jury is commenced request it; the charge when so written and given shall not be orally qualified, modified, or in any manner explained to the jury, otherwise than in writing, and the entire charge and instructions to the jury, when thus reduced to writing, shall at the request of either party, or of the jury, be taken by the jurors in their retirement and returned with their verdict into court, and shall remain on file with the papers in the case.

8. We recommend that Section 5201 Revised Statutes be amended to read as follows:

SECTION 5201. In all actions, the jury, unless otherwise directed by the court, may, at its discretion, render either a general or a special verdict. Before the argument to the jury is com-

menced, either party may submit in writing to the court and opposing counsel pertinent interrogatories upon all or any of the issues, whereupon the court shall determine whether such interrogatories, or any of them, are pertinent, and the court shall submit to the jury such of said interrogatories as are pertinent as matter of law, and if requested by either party the court shall, in connection with its charge, instruct the jurors, if they render a general verdict, to find specially upon and make answer to the interrogatories thus submitted, and the verdict and findings and answers must be filed with the clerk and entered on the journal.

SIMEON M. JOHNSON, Secretary. A. D. FOLLETT, Chairman.

June 1, 1908.

THE PRESIDENT: I suggest that in view of the eminent reputation of the speaker, who is to be with us tomorrow, that we appoint a Committee to wait upon him and show him the courtesies of our Association.

MR. JOHN MCSWEENEY, of Wooster: I make a motion to that effect.

The motion was unanimously adopted.

THE PRESIDENT: I will appoint on that Committee, Judge C. B. Heiserman, of Urbana, acting Chairman of the Executive Committee, Secretary McCarter, of Columbus, and John McSweeney, of Wooster.

THE PRESIDENT: The report of the Committee on Grievances is next in order, but the Committee, having no report, we will call for the Committee on Legal Education. This Committee asks for further time, which will be granted. If the Chairman of the Committee on Legal Biography is ready to report, we will now call for that report.

MR. SMITH W. BENNETT, of Columbus: I do not intend, Mr. Chairman, to read this report. It is largely composed of the memorials to deceased members who died during the past year. I herewith submit the report of the Committee.

REPORT OF THE COMMITTEE ON LEGAL BIOGRAPHY

PUT-IN-BAY, OHIO, July 7, 1908.

To The Ohio State Bar Association:

Pursuant to the requirements of the Constitution of the Association a biographical sketch of each member should be submitted to the Association and published in the proceedings thereof. In so far as it has been possible for me to obtain memorials of members deceased during the past year, I submit them herewith. They are as follows:

Isaac Snively Motter, of Lima, Ohio.
Judge George R. Haynes, of Toledo, Ohio.
Captain Richard Waite, of Toledo, Ohio.
General T. W. Sanderson, of Youngstown, Ohio.
Judge Franklin J. Dickman, of Cleveland.
George C. Kohler, of Akron, Ohio.

In addition thereto there have been reported to me the deaths of the following members:

Richard M. McKee, Toledo, who became a member July 9, 1893, died March 25, 1907.

Geo. D. Parker, Ashtabula, who became a member July 6, 1904.

William H. Beavis, Cleveland, who became a member July 27, 1883, died January 4, 1908.

I request that the memorials herewith presented be printed in the proceedings of this Association.

ISAAC S. MOTTER

Isaac Snively Motter, an attorney of high standing in the western counties of the state, died at his home in Lima, on the twenty-first day of March. He was born in 1852 at Williamsport, Maryland. He received his early education in the public and private schools of his native county, and later entered Roanoke College, Virginia, where he remained five years, graduating in 1872 from that distinguished institution of learning. Mr. Motter began the study of the law quite early in life. After most careful research in the various branches of learning leading up to the study of the law, he began active study with Col. George Schley, at Hagerstown, Maryland. He was admitted to practice at the bar in the state of Maryland in 1877.

In 1881, Mr. Motter came to Lima, his future home. Under the state laws of Ohio, he was required to be re-examined to enter upon the practice of law. Accordingly he appeared before the Supreme Court in 1881, and upon examination was admitted to practice in Ohio. On October 20, of the same year, he formed a law partnership with Hon. W. L. Mackenzie, under the firm name of Motter & Mackenzie. The firm has long been regarded one of the strongest law firms in Lima, and its practice is both wide in range and lucrative.

In 1887, Mr. Motter was elected prosecuting attorney of the county of Allen and entered upon the duties of that important office in January, 1888, filling the position successfully in every way for six consecutive years. In 1894 he was chairman of the Democratic county executive committee, in which capacity he conducted one of the most important campaigns of the county, bringing to Lima as speakers no less distinguished men than Senator Calvin S. Brice and Ex-Governor David B. Hill, of New York. Mr. Motter was always more or less active in Democratic politics. He always took a deep interest in affairs of the state and nation, and was one of the best posted men in the country upon state and national affairs.

In 1886, Mr. Motter was most happily united in marriage to Harriet Amelia Meily. They had one child, Benjamin Snively, born in 1893, who is a bright prepossessing boy, interested in his studies, with a great future before him.

Mr. Motter was an active member of the Independent Order of Odd Fellows and of the Free and Accepted masons, choosing Garrett Wykoff Lodge as his Masonic Home. He was an active member of the Lutheran Church, and was for many years superintendent of the Sunday School of that church organization. The confidence which the public had in Mr. Motter was further shown by the fact that he was selected President of the Lima Library Association, which position he filled with signal ability. He was also Dean of the Law Department of Lima College.

Mr. Motter was widely read in many departments of literature; he was a refined and cultured orator, frequently called upon for addresses upon moral and scholastic topics. As an advocate he was one of the strongest in the country, making a personal appeal that went direct to the hearts of the jurors and

the judge. He was recognized as one of Allen County's staunchest citizens—always found battling for the right.

He is survived by his wife, Harriet A. Motter, and his son, Benjamin S. Motter.

The Allen County Bar Association passed resolutions of respect upon his death.

GEORGE R. HAYNES

George R. Haynes was born in Monson, Mass., January 24, 1828, and came to Huron county, Ohio, with his father's family, in the spring of 1836, and settled on a farm near Norwalk, where he resided with his father and worked on the farm until he was seventeen years of age. Then for several years he attended Norwalk Academy teaching and studying by turns. He commenced the study of law with John Whitbeck, Esq., at Norwalk, in 1849 or 1850, and in the spring of 1851, at the invitation of Hon. L. B. Otis, he came to Fremont and pursued his legal studies with Mr. Otis. December 2, 1851, he was admitted to the bar in Ohio by the Supreme Court at Columbus and on January 1, 1852, opened an office in Fremont in connection with the late E. F. Dickinson under the firm name of Dickinson & Haynes. Dickinson had been elected in 1851 prosecuting attorney of Sandusky county, but early in 1853 resigned, and upon his resignation Mr. Haynes was appointed to fill the vacancy until the fall of 1853, when he formed a law partnership with Hon. John L. Green, Sr., which continued till September, 1854.

September 20, 1854, he went to Toledo and there continued his profession, and was for a while city solicitor, also prosecuting attorney of Lucas county. In the fall of 1883 he was a candidate for Common Pleas judge, and on the face of the election returns was apparently elected, and a certificate of election and commission were accordingly issued to him. Later a clerical error in the count of votes of Green Creek township, Sandusky county, was discovered, which, upon a contest changed the result, and his competitor, Judge Pike, was seated, after about a year of acceptable service on the bench by Judge Haynes. In 1884, at the first election for judges of the circuit court, Judge Haynes was elected in the sixth circuit, with Judge Baldwin, of Cleveland, and Judge Upson, of Akron, the sixth circuit then comprising the counties of Lucas, Ottawa, Sandusky, Erie, Huron, Lorain.

Medina, Summit and Cuyahoga. The counties of Cuyahoga, Summit, Medina and Lorain were subsequently taken from the sixth and the counties of Williams, Fulton and Wood added to the original sixth, in which Judge Haynes was re-elected in 1890, his name being on both Republican and Democratic tickets. He was re-elected in 1896 and in 1902. In 1889-90 he was elected chief justice of the circuit courts of Ohio. If he had been spared to serve out his term to expire February 9, 1909, he would have been on the circuit bench continually for twenty-four years. All of the circuit court judges elected at the first election to that bench, only Peter F. Swing, of the first circuit, Thomas Cherington, of the fourth, and Peter A. Laubie, of the seventh, have had the honor of continuous service to the present.

It may truthfully be said of Judge Haynes that in every position to which he was chosen he brought to the performance of the duties it imposed, a conscientious desire for faithful and efficient service; he discharged the duties of a judge with great ability and an acute sense of justice. His abiding courtesy and kindly disposition endeared him to every member of this bar, and we desire to furnish to his family and to spread upon the journal of this court our appreciation of him as a man and as a judge, and our deep sorrow that he will meet with us no more in this court room where we learned to love him so well.

RICHARD WAITE

Captain Richard Waite was recognized as one of the "first citizens" of Toledo, having resided there for over half a century and on May 21, 1907, celebrated his fiftieth, or golden wedding anniversary at the family home. He was characterized by ability, fidelity and sterling integrity. During all his residence in Toledo he was a member of the Lucas County bar, being one of the oldest and most conspicuous.

Captain Waite was born September 26, 1831, at Lyme, Conn. He was a son of the Hon. Henry Waite, former Chief Justice of Connecticut. His youth was spent in the East, and he was graduated from Yale College with the Class of 1853. He then began the study of law with his brother, the Hon. Morrison R. Waite, who afterwards became Chief Justice of the Supreme Court of the United States. He was admitted to the bar at Cleveland in

1855, and immediately thereafter Messrs. M. R. & R. Waite opened a law office in Toledo. After the senior member was elevated to the Supreme Bench Capt. Richard Waite formed a partnership with his nephew, Mr. E. T. Waite, a son of the Chief Justice, which continued until the death of the junior partner, when he associated himself with Mr. Oliver B. Snider, and this partnership continued until Companion Waite was elected Probate Judge of Lucas County in 1902, retiring in 1906.

The only interruption to Judge Waite's professional career, was the Civil war. During that conflict he entered the service May 30, 1862, as Captain of Company "A," 84th O. V. I.; discharged September 20, 1862, by reason of expiration of term of service; again entered service May 13, 1864, as Captain Company "C," 10th O. V. I.; discharged September 22d, by reason of expiration of term of service; served with the 84th O. V. I. at Cumberland, Maryland, was detailed and acted part of the time as Judge Advocate on general court martial; with the 130th O. V. I. served at Bermuda Hundred and Point of Rocks.

He was a comrade of Toledo Post, 107, G. A. R. and a Companion of this Commandery, Military Order of the Loyal Legion of the United States, and for many years an active worker in Trinity Protestant Episcopal Church.

He was a manly type of an educated American gentleman, always approachable, a wise counselor, the rarest example of the Christian lawyer who sought to prevent rather than encourage legal contention.

Since his retirement from the office of Probate Judge, the last year, his health has been gradually failing and, though he was afflicted with a partial nervous paralysis, he retained his faculties to a remarkable degree. On the day of his death he affixed, in bold, clear characters, his signature to his report to the court, as receiver, in one of the oldest cases on the docket.

He is survived by a widow, three sons and two daughters. They are Mrs. Alice Voris Waite, of Toledo; Richard Waite, Jr., of State of Washington; William H. Waité, of Cleveland; Attorney John B. Waite and the Misses Marie and Alice Waite, of Toledo.

THOMAS W. SANDERSON

General Thomas W. Sanderson, whose death occurred at his home in the city of Youngstown, Ohio, on the twenty-sixth day of January, 1908, was born in Indiana, Indiana county, Pa., in October, 1828. In 1834 his father, a sturdy farmer of Scotch descent, moved with his family to this locality where he continued to reside until his death. The son grew to manhood upon his father's farm, receiving as liberal an education as could be obtained in the common and select schools of this vicinity. He read law in this city and soon after his arrival at his majority he was admitted to practice and for more than 50 years he devoted himself to his profession, interrupted only by the Civil war. At the commencement of that war, prompted by his patriotic impulses, he volunteered, was commissioned as a lieutenant, and by frequent promotions rose to the rank of brigadier general. He was regarded as one of the most daring and efficient officers in the volunteer service. As an organizer, tactician and strategist, he had few superiors. He was recognized by his comrades and associates as a man of undaunted courage and unusual capacity as a soldier and all of his promotions were earned by arduous service.

At the close of the war he resumed the practice of law in this city, and from that time forward he devoted himself assiduously to his profession. He served one term as prosecuting attorney of Mahoning county, and for several years served as solicitor of the city of Youngstown, but official life had for him no allurements. His career as a lawyer was remarkable. For more than half a century he was diligently engaged upon one side of almost every important legal controversy in the courts of this and adjoining counties, and he left the impress of his legal attainments and capabilities upon the records of these courts which will stand as an enduring monument to his memory.

He was a lawyer of the old school, and by that is meant one who indulged in general practice and was not a specialist, one who believed the practice of law should rise to the dignity of a profession and should not be followed merely as a commercial pursuit. In the preparation of his cases he was industrious, painstaking and systematic. His pleadings were models of elegance, not only in appearance but in diction. In the trial of causes he was always kind and courteous, particularly so if his antagonist

was a young member of the Bar, but no matter how thoroughly prepared his opponent might be or how well equipped intellectually, he always found in General Sanderson "a foeman worthy of his steel."

FRANKLIN JOSEPH DICKMAN

FRANKLIN JOSEPH DICKMAN was born in the city of Petersburg, Virginia, on the 22d day of August, A. D. 1828, and died of heart disease, at his home in Cleveland, Ohio, on the morning of February 12, 1908.

He was a full blooded American by descent. One of his ancestors, Timothy Foster, with twelve sons, served in our Revolutionary army.

The future judge studied in the Petersburg Classical Institute in the same class with Roger A. Pryer, but did not learn secession. At sixteen he entered Brown University at Providence, Rhode Island, so far advanced that at eighteen he graduated—delivering the salutatory oration, one of the honors of his class. The noted Dr. Francis Wayland was then the President of Brown. Among the class were Samuel S. Cox, noted congressman, first from Ohio, and later from New York City; Thomas Durfee, afterwards Chief Justice of Rhode Island, and Francis J. Wayland, son of the President, later Lieutenant Governor of Connecticut and head of the Yale Law School.

After a year of post-graduate study, young Dickman studied law with the late Chief Justice Bradley of Rhode Island, and later in the office of Hon. Charles F. Tillinghast in Providence, and after admission, practiced there until 1858. In 1857 he was Democratic candidate for Attorney General, but shared defeat with Ambrose E. Burnside, who then ran for Congress. In 1858, President Buchanan appointed him a member of the Board of Visitors of the West Point Military Academy; and in December of that year he removed to Cleveland, Ohio, and entered the bar of Cuyahoga county.

During his studies in Providence, the more advanced students were thoroughly taught the Constitution of the United States, in a school book based upon Webster's great arguments

against the South Carolina doctrine of 1832-3. Therefore, in 1861, Mr. Dickman was a War Democrat, and was elected that year by the Union party a member of the Ohio House of Representatives. He served as chairman of several committees and took an active and useful part in legislation.

In November, 1865, he formed a partnership with Judge R. P. Spalding, which existed until 1875. In 1867 President Johnson appointed him United States District Attorney for the Northern District of Ohio, the duties of which office he performed with acknowledged ability and success. In 1883, Governor Foster and the Ohio Senate made him a judge of the second Ohio Supreme Court Commission, on which he sat for the two years of its statutory existence.

On the eleventh of November, 1886, Governor Foraker appointed him a judge of the Supreme Court of Ohio, to fill the vacancy caused by the decease of Judge William W. Johnson. In 1887 he was elected to fill the unexpired term, and in 1889 for a full term. He retired from the bench in February, 1895. His opinions while on the commission are in Volumes 40 and 41, Ohio State Reports; those rendered in the court are in Volumes 45 to 52, both included.

Possessed of a judicial mind, thoroughly educated in legal principles, guided by logical common sense, he not only formed right conclusions, he stated them in a style so clear, plain and well chosen that he was easily understood. Many very important and difficult questions were solved, and some of the opinions strongly approved by the Supreme Court of the United States and by Lord Chief Justice Coleridge beyond the Atlantic.

Upon all with whom he had relations, and especially his associates at the bar and on the bench, he made an enduring impression by his untiring industry, his breadth and thoroughness of scholarship, his clearness of insight, his ripeness of judgment, and above all by his high ideals of private, professional and public life. He always had an unflinching faith in the integrity of the courts and in their ability to determine rationally all con-

flicting claims and interests. In all ways, his was a successful career. To those who knew him longest and most intimately, it is the subject of agreeable and profitable contemplation. It stands forth in their memories as the model life of the American lawyer and scholar.

Judge Dickman was a contributor to current literature. Some of his best papers appeared in the Knickerbocker Magazine. In 1892 his Alma Mater conferred on him the degree of LL.D.

In 1862 he married Miss Anne Eliza Neil of Columbus, Ohio, who survives him. He is also survived by three children, Robert Neil Dickman of Chicago, Miss Edith Dickman of Cleveland, and Mrs. Mabel Dickman Grandy, wife of Mr. Charles R. Grandy of Norfolk, Va. Death came to him in his eightieth year, after an honorable and useful life.

GEORGE C. KOHLER

George C. Kohler died on March 14, 1908, at his home in Akron, Ohio, at the age of 39 years. His entire life, excepting his college years, was spent in this community. He received the advantages of a thorough and liberal education, and was carefully prepared for his career as a member of the bar, his father having paid special attention to his education, giving to his son the advantages of his ripe and scholarly experience as one of the leading members of the Bar of the State of Ohio.

During his professional career he was associated in business with his father, Hon. J. A. Kohler, and Messrs. Harvey Musser and Arthur S. Mottinger, members of this bar.

His education and training for the bar were supplemented by extensive travel in Europe and America, eminently qualifying him for the management of the large affairs which from time to time came under his care and supervision in the practice of his profession. George C. Kohler rapidly arose in his profession, and took a prominent position as a member of the bar.

He was amiable in disposition, of pleasing personality and most generous in the treatment of his friends and the members of the profession.

His untimely death came as a great shock to his many friends, and especially to the members of the bar. We are greatly grieved by his sorrowful death, and deeply sympathize with his widow, his stricken parents and family, and trust that all these may have strength as their need is to bear with fortitude their heavy loss.

Respectfully submitted,
SMITH W. BENNETT, Chairman of Committee.

THE PRESIDENT: You have heard the report, gentlemen of the Association. If there are no objections, it also will be recorded by uanaimous consent.

The next committee on the program for today is the Committee to Report a Code of Legal Ethics. Judge Dillon of Columbus is chairman, but he is not present. Next is the Committee on Banking Legislation. Judge Gilbert H. Stewart of Columbus, chairman, asks for further time. Next is the Committee on Taxation Legislation. Atlee Pomerene of Canton, the chairman, is not present, and we will pass that. Next is the Committee to Revise Section 550 of the Revised Statutes. Is the chairman of that committee here? The Chair hears no response.

Next is the Committee to Lengthen the Term of Supreme Judges.

MR. SIMEON JOHNSON: I felt much interested in Mr. Follet's comment on the inactions of the members of the committee, although I happen to be a member of his committee. It has been very dear to my heart to have this measure passed, and if it had been any use drafting a law and presenting it to the Legislature we would have done it, but we found on canvassing the situation that we could do nothing this year and we did not draft a bill. I hope the future committee to be appointed will continue the good work, although it may be rendered unnecessary, owing to the fact that there is a recommendation of the Committee on Judicial Administration and Legal Reform this year which will dispense with any further action upon the part of the committee.

THE PRESIDENT: The next committee is the Committee to Report on Legislation as to the Circuit Court. Not hearing any response, we will pass that report. Last year we had three delegates to the American Bar Association and expected a report from them this year. I understand that they are not here and the report can be made at some other time.

On motion unanimously adopted, Hon. D. A. Hollingsworth was tendered a vote of thanks for his able address.

THE PRESIDENT: Gentlemen, if I had a wig on, I would take it off. Is there any other business before the Association? Tomorrow morning at 10 o'clock, this Association will listen to one of the ablest orators of America today. Then we will have a discussion of the Report of the Committee on Judicial Administration and Legal Reform and at 2 o'clock an address on Uniform Laws by Interstate Compact, by Mr. Ben W. Johnson of Toledo. The discussion of the reports of the committees will also come up at that time. We will now stand adjourned until tomorrow morning.

SECOND DAY—Morning Session

THE PRESIDENT: The Association will come to order. We have with us this morning, a gentleman eminent at the bar from the State of New York, and we in Ohio understand that we owe much to New York in the matter of judicial procedure. I think we will owe more after we have listened to the distinguished gentleman. I now have the pleasure of introducing the Honorable Wm. Bourke Cochran, of New York. (Loud applause.)

(For Hon. Wm. Bourke Cochran's address see Appendix.)

On motion, unanimously adopted, the Association extended a vote of thanks to Hon. Wm. Bourke Cochran, of New York, for his brilliant and masterly address.

On motion the Association then adjourned until 2 p. m.

SECOND DAY—Afternoon Session

THE PRESIDENT: We will now hear the report of the Committee on Legal Education. Mr. W. P. Rogers, of Cincinnati, is the Chairman of that Committee.

MR. ROGERS: Our Committee desires to submit the following report, which on motion was adopted.

REPORT OF COMMITTEE ON LEGAL EDUCATION TO THE OHIO BAR ASSOCIATION

Your Committee on Legal Education in submitting its report directs attention to section 560 of the revised statutes of Ohio which provides that no person shall be permitted to take the examination for admission to the bar in this state until he has produced from some attorney-at-law a certificate setting forth among other things, that the applicant "has regularly and attentively studied law during the period of three years previous to such application."

It is submitted that a uniform standard of legal education should be adopted in order to comply with the requirement of this statute. With this in view, your committee suggests the following regulations with a recommendation that they be respectfully submitted to the Supreme Court of this state with the approval of this Association and a recommendation by this Association, that they, or rules of a similar character, be adopted for the purpose of establishing a more uniform basis for admission to the bar.

All students who are applicants for admission to the Ohio Bar shall be divided into two classes:

First. Students attending law school.

Second. Students actually engaged in the study of law in the offices of practicing attorneys.

A law school whose certificate of study will be accepted as evidence of compliance with the requirement as to regular and attentive study of law, shall furnish facilities to, and make requirements of, its studies as follows:

1. It shall have a library and suitable reading room open to its students for study at least eight hours each day of the week except Sunday.

2. Its library shall contain at least the following books:

(a). The reports of the courts of last resorts of Ohio, New York, Massachusetts, Indiana and Illinois, or Michigan, and the latests digests thereof.

(b). The lastest edition of the revised statutes of Ohio.

(c). The reports of the Supreme Court of the United States and the Federal Reporter or United States Circuit Court of Appeals.

(d). The latest edition of at least one standard text book on each of the subjects hereinafter enumerated as required for admission to the bar.

(e). A complete set of some one of the encyclopedias of law or General Digests.

3. It shall give to its students during the entire three years course the equivalent of not less than 1200 lectures or recitations of periods of not less than forty minutes each, the said lectures or recitations to be divided as nearly equal as practicable among the three years of work, and such lectures or recitations shall be given upon the subjects as follows:

The law of

Real and personal property	Agency
Torts	Suretyship
Contracts	Domestic Relations
Evidence	Wills
Pleading	Corporations
Partnership	Equity
Bailments	Criminal Law
Negotiable Instruments	Constitutional Law

Legal Ethics

4. Examinations shall be held either at the end of each half year in all the work of that period, or at the end of the year in all the work of the entire year, or at the time of finishing any course. Each school shall report its passing grade to the Su-

preme Court, and a correct record of each man's examination grades shall be kept, and reported to the Supreme Court.

5. A record of attendance of each student upon lectures and recitations shall be kept and each student shall be entitled to receive when requesting it, a certified statement signed by the Dean, or other chief officer, or secretary of the school, stating the exact number of lectures and recitations attended by him in each subject and the examination grades received in each subject.

One full year's work in a law school as herein defined shall constitute the regular and attentive study of law for one year as required by the statutes of Ohio.

Students pursuing their law studies in law offices shall study the same subjects and devote as much time to each subject as is required of students pursuing their studies in law schools, and one year of such work shall extend over twelve calendar months.

Any law student desiring to apply for admission to the bar after January 1, 1909, shall send to the clerk of the Supreme Court evidence that shall be satisfactory to the court that he has completed work equivalent to a full course of four years in an Ohio first grade high school. Such evidence may consist of the following:

(a). Matriculation in any of the accredited colleges of Ohio or other institutions of equal rank.

(b). Diploma from any high school or academy having the rank of an Ohio high school of the first grade.

(c). A certificate from the State Board of Examiners stating that the applicant has passed examinations in work equal to the full course of an Ohio high school of the first grade, provided that said board may in its discretion accept in lieu of an examination in one or more subjects the certificate of any Ohio high school of the first or second grade or any approved academy or private school, showing that the student has passed satisfactory examinations in such subject or subjects.

It is desirable that the three years required for the study of law shall not begin until after the requirement as to general education shall have been fully complied with and a finding of

such fact entered upon the records of the court. In no case shall an applicant be admitted to practice until the expiration of at least one year after he has completed the preliminary educational requirement above named.

At the end of each year of law study the student shall file with the clerk of the Supreme Court a certificate from the law school he has attended or the attorney in whose office he has sudied, which shall state the subjects studied during the year, the number of lectures or recitations actually attended in law school or recitations made to the lawyer in each subject, and the examination grades received in each subject. He shall also file with such certificate a complete set of examination questions submitted to him in such examinations, and if he has failed to attend ten per cent. or more of the numbers of lectures or recitations required in any subject he shall also furnish a statement of the cause of such failure for such action as the court may deem proper. In the event that any law school shall file with the clerk of the Supreme Court a copy of questions used in any examinations together with a statement of the date on which the same were given it shall not be necessary for the student to furnish a copy of the same questions.

Respectfully submitted,

W. P. ROGERS, Chairman,
J. H. STRAMAN,
JAS. HARRINGTON BOYD,
A. B. JOHNSON,
GILBERT H. STEWART.

JUDGE MALSBARY: Mr. President, if you will allow me a moment, the Committee on Admissions beg leave to report that they have received additional applications for membership, which I will read:

Alex Boxwell .....Lebanon
William B. Cockley.....Columbus
George E. Crane.....Kenton
Fleming H. Crew.....Cleveland
E. De Witt Erskine.....Steubenville
Glenn R. Faling.....Toledo

Chas. A. Groom	Cincinnati
Edward A. Hafner	Cincinnati
Chas. B. Hunt	Coshocton
William B. James	Gibsonburg
Datus R. Jones	Bowling Green
Homer Metzgar	Clyde
Leger J. Metzger	Toledo
Bertrand C. Miller	Cleveland
Nelson D. Miller	Steubenville
William McD. Miller	Steubenville
Louis W. Morgan	Toledo
E. Stanton Pearce	Steubenville
J. S. Paisley	Steubenville
Eugene Rheinfrank	Toledo
George W. Ritter	Sandusky
H. Melvin Roberts	Cleveland
J. D. Watson	Tiffin
G. P. Gillmer	Niles
Thomas W. Lang	Findlay
Edward Follett	Marietta

REINSTATED.

William B. Woods	Cleveland

On motion they were unanimously elected to membership.

Mr. Eugene Reinfrank, of Toledo, then read a communication from the Lucas County Bar Association to the Ohio State Bar Association.

TOLEDO, OHIO, July 6th, 1908.

Ohio State Bar Association:

At a meeting of the Lucas County Bar, held at Toledo, Ohio, on July 6th, 1908, in response to a call signed by ninety representative members of that bar, the following resolutions were adopted:

"Be it resolved by the assembled Bar of Lucas County that the judges of all the courts of Ohio should be nominated by non-partisan ballot, regardless of political affiliations, and

"Be it further resolved, that all honorable means should be employed to secure the passage of a measure to that end by the next legislature, and

"Be it further resolved, that the foregoing resolutions be communicated to the Ohio Bar Association and its favorable consideration solicited."

After some discussion the resolution was laid on the table.

THE PRESIDENT: I have the pleasure now of introducing Mr. Ben. W. Johnson, of Toledo, who will address us on Uniform Laws by Interstate Compact.

(For Mr. Ben W. Johnson's address see Appendix.)

THE PRESIDENT: The Secretary has two telegrams which he would like to read to the Association.

HOTEL VICTORY, PUT-IN-BAY, OHIO.

Dear Brethren and Friends:

Your telegram received; thanks for your greetings and sympathy, they are helpful; hope you are having a pleasant and successful meeting. Present situation here badly complicated. Am making best fight I can. JAMES O. TROUP.

Ohio State Bar Association:

I appreciate most highly the kind telegram of greeting from the State Bar Association. My best wishes for a successful meeting. F. J. MULLINS.

JUDGE GILBERT H. STEWART, of Columbus: I desire to present at this time the report of the Committee on Banking.

The report was received and committee discharged.

REPORT OF COMMITTEE ON BANKING TO THE OHIO STATE BAR ASSOCIATION

To the Ohio State Bar Association:

Your Committee on Banking Legislation beg leave to submit the following report:

On May 5, 1908, the banking bill introduced by the Hon. Warren Thomas, of Trumbull county, was approved by the Governor and became the law.

While this bill is not perfect, it is the best bill for the banking interests of the State in general that has ever been presented to the General Assembly. It is in effect a banking code, providing for the incorporation, conduct and management of banks,

subject to examination and supervision by the State. All banks hereafter incorporated must comply with its provisions, and existing banks may by action of their stockholders elect to conform their business to the act, but after April 1, 1910, all banks will come under its provisions. All banks are subject to inspection at once by the superintendent of banks to be appointed by the Governor for the term of four years, but subject to removal. The superintendent of banks is to be furnished by the State with an office, the necessary clerks, and examiners, and is required to make two examinations each year of all State banks and has full power of inspection. The State pays all expenses of conducting the office.

All banks must make four reports to the superintendent each year, and any false statement in any report or false entry in any book intended to deceive is punishable by heavy fine and imprisonment.

All banks must maintain a reserve of fifteen per cent. of which from two and one-half to six per cent. must be kept in the vaults of the bank, according to the character of business done by it. In the case of savings banks and trust companies one-half of this cash reserve may be kept in United States bonds and bonds of cities and counties in Ohio.

The character of loans and investments is carefully prescribed and a limitation is made of loans so that loans to any one person must not exceed twenty per cent. of the capital and surplus of the bank.

We believe that this act providing for supervision and publicity as to the business and conduct of banking corporations in the State will result in improved methods of banking and in greater safety to the depositors.

Respectfully submitted,

GILBERT H. STEWART, Chairman.
JOHN N. VAN DEMAN,
T. H. HOGSETT,
A. G. REYNOLDS,

Committee.

The report of the Committee on Taxation was handed to the Secretary but owing to the absence of the Chairman of the Committee was not presented to the Association, and was, therefore, not acted upon, but the report as submitted is as follows:

To the Ohio State Bar Association:

The committee appointed at the last session of the Bar Association, under the resolution of Hon. Gilbert H. Stewart, for the purpose of preparing and presenting to the legislature such an amendment to the constitution as will tend to correct the evils of the present system of taxation, and to equalize its burdens, beg leave to report that the Honorary Tax Commission appointed by the Governor, prepared and presented to him a form of an amendment to Article 12, Section 2, which reads as follows:

"The General Assembly shall have power to establish and maintain an equitable system for raising state and local revenue. It may classify the subjects of taxation so far as their differences justify the same, in order to secure a just return from each. All taxes and other charges shall be imposed for public purposes only and shall be just to each subject. The power of taxation shall never be surrendered, suspended or contracted away. Bonds of the State of Ohio, bonds of any city, village, hamlet, county or township in this state and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value $200, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law. All taxes and exemptions in force when this amendment is adopted shall remain in force, in the same manner and to the same extent, unless and until otherwise directed by statute."

The Governor transmitted this proposed amendment, with his approval, to the General Assembly, and by joint resolution it will be submitted to a vote of the people at the election to be held in November, 1908.

We recommend that the Ohio State Bar Association endorse it, believing that it will give a freer hand to the General Assem-

bly, thereby enabling it to do away with double taxation, to so classify the subjects of taxation as to more equitably distribute its burdens, and to establish and maintain a system of tax laws more in keeping with the advanced thought upon the subject.

Respectfully submitted,

ATLEE POMERENE,
Chairman.

On motion, the discussion and consideration of the report of the Committee on Judicial Administration and Legal Reform was set for 9 a. m., Thursday.

Mr. Benton S. Oppenheimer, of Cincinnati, master of ceremonies of the athletic events, then addressed the Association and invited all to take part in the field day which was to be held on the campus immediately upon adjournment.

On motion the convention adjourned to 9 a. m., Thursday.

THIRD DAY—Morning Session

THE PRESIDENT: The first thing on the program this morning is the consideration and discussion of the report of the Committee on Judicial Administration and Legal Reform.

On motion of Mr. A. D. Follett, Chairman of the Committee on Judicial Administration and Legal Reform, it was agreed that the report of the Committee was to be taken up section by section in the numerical order of the section, and that the subject matter of each section was to be disposed of before proceeding to the next.

THE PRESIDENT: I will ask the Secretary to read the first recommendation.

MR. MCCARTER: I will read the first section of the report of the Committee on Judicial Administration and Legal Reform, which is as follows:

1. We recommend that the Divorce Laws of the State be amended as follows:

(a) By providing that in all uncontested cases counsel shall be appointed by the court to represent the non-contesting party.

(b) That no divorce shall take effect until entered and shall not be entered until after the expiration of six months from the announcement of the decision allowing the divorce; and until so entered such decree shall be within the absolute control of the court in which the cause is pending.

After some discussion by Judge J. R. Johnston, of Youngstown, A. D. Follett, H. C. DeRan, of Fremont, Gen. Chas. H. Grosvenor, E. B. King, of Sandusky, O. S. Brumback, of Toledo, and J. M. Smedes, of Cincinnati, on the amending of subsection (a) by changing the word "shall" to "may" the amendment was defeated and subsection (a) as recommended by the Committee was adopted.

Subsection (b) was then considered and discussed by Judge J. R. Johnston, of Youngstown, James Harrington Boyd and J. K. Hamilton, of Toledo, but was not adopted by the Association.

THE PRESIDENT: Following the rule adopted on Wednesday, we will now suspend the discussion of the report of this Committee and take up the regular order of business for the day.

JUDGE MALSBARY, Chairman of the Committee on Admissions: Mr. President, if in order, I wish to present the following names for membership, and move their election:

John A. Alburn.....Cleveland
William T. Devor.....Ashland
Manuel Levine .....Cleveland
Harry F. Payer.....Cleveland
Roy H. Williams.....Sandusky
C. T. Marshall.....Zanesville

Motion unanimously adopted and the new members were elected.

THE PRESIDENT: I now have the pleasure of introducing a veteran of this Association, General Charles H. Grosvenor, of Athens, Ohio, who will address us on "Criminal Law." (Loud applause.)

MR. PRESIDENT: I am not in the habit of reading an address. I presume that if I had acquired the habit a good many years ago it would have been better for me, and no doubt more agreeable to my audience. But on the present occasion, discuss-

ing as I am going to, some questions of law, I felt the necessity of making some preparation and will do my best to read the manuscript so as to convey my ideas, right or wrong, to my audience.

(For Gen. Charles H. Grosvenor's address see Appendix.)

THE PRESIDENT: We will now resume the regular order of business. The report of the Committee on Nomination of Officers is in order.

CHARLES H. NORTHRUP, of Toledo: The Committee on Nomination of Officers begs leave to report and recommend:

For President—A. D. Follett, of Marietta.
For Secretary—Edward B. McCarter, of Columbus.
For Treasurer—Clement R. Gilmore, of Dayton.

On motion the report of the Committee on Nomination of Officers was unanimously adopted by the Association, and the officers recommended by the Committee were declared to be the officers of the Association for the ensuing year.

The Secretary then read the names of the members of the standing Committees for the ensuing year from Judicial Districts as follows:

COMMITTEE ON NOMINATION OF OFFICERS

1st District, Charles B. Wilby, Cincinnati.
2d District, A. C. Buchanan, Piqua.
3d District, John H. Straman, Ottawa.
4th District, C. S. Northup, Toledo.
5th District, M. R. Patterson, Columbus.
6th District, Frank Taggart, Wooster.
7th District, Geo. E. Martin, Lancaster.
8th District, Ernest L. Finley, Steubenville.
9th District, J. B. Burrows, Painesville.
10th District, Harlan F. Burket, Findlay.

VICE-PRESIDENTS

1st District, Chas. H. Stephens, Cincinnati.
2d District, Oscar T. Martin, Springfield.
3d District, Hugh T. Mathers, Sidney.

4th District, R. K. Ramsey, Sandusky.
5th District, S. W. Durflinger, London.
6th District. R. M. Voorhees, Coshocton.
7th District, Chas. H. Grosvenor, Athens.
8th District, D. A. Hollingsworth, Cadiz.
9th District, J. J. Clark, Canton.
10th District, N. R. Harrington, Bowling Green.

EXECUTIVE COMMITTEE

1st District, John Marshall Smedes, Cincinnati.
2d District, C. B. Heiserman, Urbana.
3d District, John H. Straman, Ottawa.
4th District, C. S. Bentley, Cleveland.
5th District, C. O. Hunter, Columbus.
6th District, F. M. Marriott, Delaware.
7th District, Geo. E. Martin, Lancaster.
8th District, A. H. Mitchell, St. Clairsville.
9th District, Chas. Koonce, Jr., Youngstown.
10th District, Harlan F. Burket, Findlay.

COMMITTEE ON JUDICIAL ADMINISTRATION AND LEGAL REFORM

1st District, Simeon M. Johnson, Cincinnati.
2d District, E. P. Mathews, Dayton.
3d District, E. S. Mathias, Van Wert.
4th District, Lee Stroup, Elyria.
5th District, Jno. F. Wilson, Columbus.
6th District, Chas. B. Hunt, Coshocton.
7th District, Maurice H. Donahue, New Lexington.
8th District, Jno. M. Cook, Steubenville.
9th District, U. C. DeFord, Lisbon.
10th District, Benjamin F. James, Bowling Green.

COMMITTEE ON ADMISSIONS

1st District, Chas. F. Malsbary, Cincinnati.
2d District, Jas. I. Allread, Greenville.
3d District, B. F. Welty, Lima.
4th District, Willis Vickery, Cleveland.
5th District, Wm. T. McClure, Columbus.
6th District, W. T. Devor, Ashland.
7th District, A. R. Johnson, Ironton.
8th District, Robert J. King, Zanesville.
9th District, C. H. Curtis, Kent.
10th District, C. H. Norris, Marion.

COMMITTEE ON LEGAL EDUCATION

1st District, W. P. Rogers, Cincinnati.
2d District, Elam Fisher, Eaton.
3d District, J. M. Killits, Bryan.
4th District, J. Harrington Boyd, Toledo.
5th District, Gilbert H. Stewart, Columbus.
6th District, Jno. McSweeney, Wooster.
7th District, Harry W. Miller, Portsmouth.
8th District, E. Stanton Pearce, Steubenville.
9th District, T. I. Gillmer, Warren.
10th District, S. P. Axline, Ada.

COMMITTEE ON LEGAL BIOGRAPHY

1st District, Morison R. Waite, Cincinnati.
2d District, W. S. McConnaughey, Dayton.
3d District, C. A. Steuve, Wapakoneta.
4th District, C. W. Dille, Cleveland.
5th District, Geo. L. Garrett, Hillsboro.
6th District, Lewis Brucker, Mansfield.
7th District, Roscoe J. Mauck, Gallipolis.
8th District, R. G. Richards, Steubenville.
9th District, T. E. Hoyt, Ashtabula.
10th District, Geo. E. Crane, Kenton.

COMMITTEE ON GRIEVANCES

1st District, Aaron A. Ferris, Cincinnati.
2d District, W. C. Thompson, Lebanon.
3d District, Robt. Newbegin, Defiance.
4th District, Geo. E. Reiter, Sandusky.
5th District, Jno. M. Sheets, Columbus.
6th District, H. A. Mykrantz, Ashland.
7th District, M. S. Webster, Pomeroy.
8th District, C. T. Marshall, Zanesville.
9th District, N. B. Billingsley, Lisbon.
10th District, H. J. Weller, Tiffin.

THE PRESIDENT: I will make the announcement that the Executive Committee meet at once and the other Committees meet on adjournment of this session and organize.

JUDGE HEISERMAN: It is of the utmost importance that there be a meeting of the Executive Committee at once in Parlor A to organize, as some of the members of the Committee must leave on the noon boats.

THE PRESIDENT: The Association will now have the pleasure of listening to Mr. Morison R. Waite, of Cincinnati, who will deliver an address on "Taxation under Proposed Constitutional Amendment." (Loud applause.)

(For address of Mr. Morison R. Waite see Appendix.)

THE PRESIDENT: Next in order is the taking up of the discussion of the report of the Committee on Judicial Administration and Legal Reform.

Moved and seconded that Paragraph 5 of the Committee's report be taken up instead of Paragraph 2. This same motion had been made at various times during the convention by some Toledo attorneys, who were very anxious to get the communication from the Bar of Lucas County before the Association, but each motion to that effect was defeated, as the Association had adopted the motion to proceed with the report of the Judicial Administration and Legal Reform Committee section by section in the numerical order of the section and as the fifth section covered the same matters as the Lucas County Bar Association resolution the Association decided to take up Section 5 of the Committee report before the Lucas County Bar Association resolution. Finally after discussion by Messrs. B. W. Johnson, Eugene Reinfrank and J. Kent Hamilton, all of Toledo, and A. D. Follett, on motion, duly adopted the Lucas County communication in regard to the nominating of all the judges of the State on non-partisan ballots was referred to the Committee on Judicial Administration and Legal Reform to report at the next meeting of the Association.

THE PRESIDENT: Now, if there is no other motion, we will proceed with the report of the Committee, and the Secretary will read the second recommendation.

And, thereupon, the Secretary read the second section of the report of the Committee as follows:

2. The General Assembly having failed to act, we renew the following recommendation of your Committee of 1907,

adopted by the Association, that Section 550 Revised Statutes of Ohio be amended in the following particulars:

"By providing that a second or subsequent affidavit for disqualification must set forth the facts claimed as showing the alleged 'interest, bias, prejudice or disqualification,' insofar as in the nature of the case this is practicable; that interested counsel be notified promptly by the clerk of the filing of such second or any subsequent affidavit and have the right to contest the truth of its allegations by filing notice asking for a hearing; that if such request for hearing be filed, the supervising judge of the district or 'judge of some other subdivision who is qualified' to whom notice is given by the clerk of the filing of the affidavit, shall forthwith fix a time and place when the charges made in the affidavit shall be heard, of which hearing all interested counsel shall have proper notice and at which hearing all parties interested may offer testimony by affidavit, deposition or production of witnesses; the decision of the judge conducting the hearing as to the existence of the alleged 'interest, bias, prejudice or disqualification,' shall be final and conclusive, shall be entered by the clerk upon the journal of the court where the 'cause or matter' is pending, and should such adjudication be adverse to the alleged 'interest, bias, prejudice or disqualification,' the cause or matter may proceed as though the affidavit had not been filed."

On motion this section was adopted.

THE PRESIDENT: The Secretary will read the third section.

And, thereupon, the Secretary read the third section to the Association as follows:

We recommend that the term of office of the Judges of the Supreme Court be lengthened.

Moved and seconded that the third section be adopted. Moved to amend that judges of all courts of record in Ohio should be elected for indefinite terms, subject only to be recalled at stated intervals.

Amendment defeated and original motion to adopt the third section was carried.

THE PRESIDENT: The Secretary will read the next section.

And, thereupon, the Secretary read to the Association section four as follows:

4. We advise that legislation be enacted making ineligible to employment as counsel by the receiver in any action, of any person, or the partner of any person, who is or has been employed by any party to the same, either in connection therewith or with the issues involved therein.

On motion the fourth section was adopted.

THE PRESIDENT: The Secretary will read the fifth section.

And, thereupon, the Secretary read to the Association the fifth section, which is as follows:

5. We recommend that the Association debate the question of the advisability of amending the constitution of the State so as to provide for the appointment of all judges by the Governor, with the advice and consent of the Senate, their tenure of office to be either for a fixed term or during good behavior.

MR. REINFRANK, of Toledo: I move that this section be referred back to the Committee on Judicial Administration and Legal Reform, to report next year in connection with the subject matter of the resolution lately referred to the same Committee.

Motion adopted.

THE PRESIDENT: The Secretary will read the sixth section.

And, thereupon, the Secretary read to the Association the sixth section, as follows:

6. We advise that Section 453 of the Revised Statutes be amended so as to repeal that clause of said Section which disqualifies a judge of the Circuit Court from sitting in a trial, or hearing upon the filing of an affidavit by a party to the cause or matter, or by the counsel of such party.

MR. H. C. DERAN: I move that this section be referred to the Committee on Judicial Administration and Legal Reform.

Motion adopted unanimously.

THE PRESIDENT: The Secretary will read the seventh section.

And, thereupon, the Secretary read to the Association the seventh section, as follows:

7. We recommend that subdivisions 5 and 7 of Section 5190 Revised Statutes be amended to read as follows:

5. When the evidence is concluded, either party may present written instructions to the court on matters of law, and request the same to be given to the jury, whereupon the court shall before the argument designate which, if any, of such instructions will be given to the jury, and any such instructions, so designated to be given, shall be given by the court in connection with the general charge to the jury at the close of the argument, and not otherwise.

7. The court after the argument is concluded shall, before proceeding with other business, charge the jury, the charge shall be reduced to writing by the court if either party before the argument to the jury is commenced request it; the charge when so written and given shall not be orally qualified, modified, or in any manner explained to the jury, otherwise than in writing, and the entire charge and instructions to the jury, when thus reduced to writing, shall at the request of either party, or of the jury, be taken by the jurors in their retirement and returned with their verdict into court, and shall remain on file with the papers in the case.

On motion the seventh section was adopted.

THE PRESIDENT: The Secretary will read the eighth section.

And, thereupon, the Secretary read to the Association the eigth section, as follows:

8. We recommend that Section 5201 Revised Statutes be amended to read as follows:

SECTION 5201. In all actions, the jury, unless otherwise directed by the court, may, at its discretion, render either a general or a special verdict. Before the argument to the jury is commenced, either party may submit in writing to the court and opposing counsel pertinent interrogatories upon all or any of the issues, whereupon the court shall determine whether such interrogatories, or any of them, are pertinent, and the court shall submit to the jury such of said interrogatories as are pertinent as matter of law, and if requested by either party the court shall, in connection with its charge, instruct the jurors, if they render

a general verdict, to find specially upon and make answer to the interrogatories thus submitted, and the verdict and findings and answers must be filed with the clerk and entered on the journal.

After some discussion by H. C. DeRan, of Fremont, and Judge Brumback, of Toledo, the recommendation of the Committee was adopted, and the Committee was instructed to make examination and ascertain the identical language of the statute in all other respects, and the amendment only be added providing for a submission of requests to opposing counsel and to the court before argument.

Moved and adopted that the President appoint a special committee of one upon each of the proposed pieces of legislation recommended by this Association at the present meeting, with instructions that that Committee of One shall draft and present for passage and endeavor to secure the passage of bills in harmony with each proposed recommendation by this Association and that the Secretary notify the men to appear at Columbus at the proper time and that their expenses be paid.

THE PRESIDENT: The next order of business, Gentlemen of the Association, would be the call of the districts for names of deceased members. There are so few of us here that it has been suggested to me that the members present report to the Secretary, so that any member of the Association knowing of the decease of a member in his district will make the report to the Secretary and it will go in our proceedings.

A MEMBER: I move that the Secretary's salary be increased to four hundred dollars a year.

Motion seconded.

JUDGE BRUMBACK: I move you that we refer this motion to the Executive Committee for consideration and report.

Motion seconded.

THE PRESIDENT: You have heard the motion that the subject of the increase of the Secretary's salary be referred for con-

sideration and report to the Executive Committee. You who favor that will say "aye"; those opposed, "no".

The motion is carried.

MR. MCCARTER: This discussion is very distasteful to me, as Secretary of the Association. I do not care for any increase.

MR. GILMORE: I move that the Secretary be allowed fifty dollars a year for clerk hire.

Motion unanimously adopted.

MR. SIMEON M. JOHNSON: I move that the thanks of the Association be given to Mr. Hollingsworth for the able and impartial manner in which he has presided over the deliberations of this Association.

Motion seconded.

MR. SIMEON JOHNSON: You have heard the motion and its second. Those in favor will say "aye."

Mr. President, you have received the unanimous thanks of the Association.

THE PRESIDENT: I say to the gentlemen of the Association that I am exceedingly thankful for that expression.

A MEMBER: I move that the thanks of the Association be extended to the other officers of the Association.

Motion unanimously adopted.

THE PRESIDENT: I hereby appoint John Marshall Smedes, of Cincinnati, to take charge of recommendation 1 of the Judicial Administration and Legal Reform Committee's Report, and endeavor to secure its passage by the Legislature in accordance with the motion just adopted by the Association. I also appoint George S. Peters, of Columbus, as a special committee in like manner for recommendation 2, and Simeon M. Johnson, of Cincinnati, for recommendation 3; H. B. Arnold, of Columbus, for recommendation 4. Recommendations 5 and 6 are both referred back to the Committee. I also appoint Frank A. Baldwin, of Bowling Green, to take charge of 7 and 8.

THE PRESIDENT: I hereby appoint as delegates to the American Bar Association, which meets August 25, 26, 27 and 28, at Seattle, Wash., Chas. H. Grosvenor, of Athens; Frank Taggart, of Wooster, and N. B. Billingsley, of Lisbon. As alternates, Benjamin F. James, of Bowling Green; W. H. Boyd, of Cleveland, and Jno. M. Cook, of Steubenville.

If there is no further business to come before the Association I wish to express my thanks to those present for their aid in making this meeting a success. Also wish to thank the Secretary of the Association and Acting Chairman of the Executive Committee for the assistance they have given me in the performance of the duties of President. The business of the Association having been completed, the session is now adjourned *sine die.*

DAUGHERTY, HARRY M.	Columbus
DAVID, WILLIAM L.	Findlay
DAVIS, LEWIS GRANT	Dayton
DAVIS, O. E.	Columbus
DAVY, J. A.	Troy
DAY, DAVID B.	Canton
DAY, JAMES H.	Celina
DAY, R. H.	Massillon
DEATON, S. S.	Urbana
DEFFENBAUGH, J. W.	Lancaster
DEMPSEY, JAMES H.	Cleveland
DENMAN, U. G.	Toledo
DENNIS, JERRY	Columbus
DE RAN, H. C.	Fremont
DEVOR, WILLIAM T.	Ashland
DEWEY, THOMAS P.	Clyde
DICK, CHARLES	Akron
DILL, LEWIS G.	Waverly
DILLE, CHARLES W.	Cleveland
DILLON, EDMOND B.	Columbus
DOAN, JOE T.	Wilmington
DOLSON, BEN R.	Lancaster
DOLSON, THOMAS H.	Lancaster
DONAHUE, MAURICE H.	New Lexington
DONOVAN, D. D.	Napoleon
DOUGLAS, ALBERT	Chillicothe
DOYLE, DAYTON A.	Akron
DUMONT, CHARLES T.	Cincinnati
DUNCAN, WILLIAM F.	Findlay
DURFLINGER, S. W.	London
DUSTIN, ALTON C.	Cleveland
DUSTIN, C. W.	Dayton
DWIGGINS, C. B.	Findlay
EASON, SAMUEL B.	Wooster
EASTMAN, E. R.	Ottawa
ELLIFF, CHARLES W.	Dayton

ELLIOTT, LEE	Seville
ELLIS, CHALLEN B.	Cincinnati
ELLIS, WADE H.	Cincinnati
EMERY, JAMES H.	Toledo
ERSKINE, E. DEWITT	Steubenville
ERSKINE, E. E.	Steubenville
ERVIN, EDGAR	Pomeroy
EVANS, MARCUS G.	Columbus
EVANS, NELSON W.	Portsmouth
FALING, GLENN R.	Toledo
FARBER, OLIN M.	Mansfield
FARR, LOUIS T.	Rogers
FAXON, THEODORE E.	Elyria
FEAZEL, E. A.	Cleveland
FERRIS, AARON A.	Cincinnati
FIESINGER, WILLIAM L.	Sandusky
FINCH, J. D.	Clyde
FINLEY, E. L.	Steubenville
FISHER, ELAM	Eaton
FITCH, WINCHESTER	Madison
FLORY, CHARLES L.	Newark
FLORY, J. A.	Newark
FOLLETT, A. D.	Marietta
FOLLETT, EDWARD	Marietta
FOLSOM, HENRY D.	Circleville
FORD, JAMES A.	Cleveland
FOSTER, I. M.	Athens
FRASER, HAROLD W.	Toledo
FRAZIER, A. A.	Zanesville
FREIBERG, A. J.	Cincinnati
FRIEDMAN, CHARLES K.	Toledo
FULLER, A. G.	Findlay
FULLER, CLIFFORD W.	Cleveland
FULLER, RATHBUN	Toledo
FUNCK, ROSS W.	Wooster

GALLAHER, J. A.	Marietta
GARFIELD, JAMES R.	Washington, D. C.
GARRETT, GEORGE L.	Hillsboro
GEDDES, F. L.	Toledo
GEER, FRANK H.	Toledo
GEER, WILLIAM J.	Galion
GEOGHEGAN, WILLIAM A.	Cincinnati
GOLDSMITH, GEOFFREY	Cincinnati
GIBSON, W. T.	Youngstown
GIFFIN, WILLIAM S.	Cincinnati
GIFFORD, W. H.	Mansfield
GILBERT, LUCIEN L.	Pittsburg, Pa., 919 Union Sta.
GILBERT, WILLIAM H.	Troy
GILLMER, G. P.	Niles
GILLMER, THOMAS H.	Warren
GILLMER, T. I.	Warren
GILMORE, CLEMENT R.	Dayton
GLOSSER, R. P.	Crestline
GOEKE, J. H.	Wapakoneta
GOFF, FREDERICK H.	Cleveland
GORDON, HARRY L.	Cincinnati
GORDON, WILLIAM	Cleveland,
GORMAN, FRANK M.	Cincinnati
GOTTSCHALL, OSCAR M.	Dayton
GREEN, T. I.	Shelby
GREENBERGER, N. M.	Akron
GREENE, THOMAS E.	Cleveland
GROOM, CHARLES A.	Cincinnati
GROSVENOR, CHARLES H.	Athens
GUERIN, W. E., JR.	Sandusky
GUERNSEY, CHARLES L.	Fostoria
GUMBLE, HENRY	Columbus
GUMBLE, NATHAN	Columbus

HACKEDORN, WILLIAM E.	Indianapolis, Ind.
HADDEN, ALEXANDER	Cleveland
HAFNER, EDWARD A.	Cincinnati
HAGAN, F. M.	Springfield
HAGELBARGER, H. M.	Akron
HALE, JOHN C.	Cleveland
HALFHILL, JAMES W.	Lima
HALL, EDWARD P.	Ashtabula
HAMILTON, J. K.	Toledo
HAMMAR, HARVEY E.	Painesville
HANNA, W. S.	Millersburg
HARGITT, ROBERT P.	Cincinnati
HARMON, JUDSON	Cincinnati
HARPER, J. C.	Cincinnati
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HARRINGTON, N. R.	Bowling Green
HARRIS, GEORGE B.	Cleveland
HARRIS, H. W.	Alliance, U. S. Consul, Nuremberg, Germany
HARRIS, L. B.	Salem
HARRIS, WILLIAM H.	Toledo
HARRISON, DWIGHT	Columbus
HARRISON, JOSEPH T.	Cincinnati
HARRISON, O. E.	Greenville
HARTER, HENRY W.	Canton
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HAYDEN, GEORGE	Medina
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HEFFNER, D. A.	Clyde
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HEISERMAN, C. B.	Urbana
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HENDERSON, W. O.	Columbus
HENRY, FREDERICK A.	Cleveland
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HERRMAN, THOMAS B.	Dayton
HERRON, JOHN W.	Cincinnati
HERRON, WILLIAM C.	Cincinnati
HERSHEY, H. H.	Columbus
HESS, ANDREW J.	Sidney
HILLIARD, J. V.	Newark
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HOFFHEIMER, HARRY M.	Cincinnati
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HOGSETT, T. H.	Cleveland
HOLBROOK, RALPH S.	Toledo
HOLE, WARREN W.	Salem
HOLLINGSWORTH, D. A.	Cadiz
HOLLISTER, HOWARD C.	Cincinnati
HOLLISTER, THOMAS	Cincinnati
HOLMES, J. T.	Columbus
HOLMES, J. T., JR.,	Columbus
HOOVER, JOHN C.	Bellefontaine
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HOPKINS, W. R.	Cleveland
HORST, JOHN R.	Columbus
HOSEA, LEWIS M.	Cincinnati
HOSKINS, E. L.	Sidney
HOSTETLER, H. H.	Canal Dover
HOUCK, LEWIS B.	Mt. Vernon
HOWE, PERCY H.	Toledo
HOWELL, WILLIAM	Cleveland
HOWLAND, PAUL	Cleveland
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HUBBARD, FRANK C.	Columbus
HUGGINS, E. N.	Columbus
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HUNTER, C. O.	Columbus
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JAMES, ELDON R.	Cincinnati
JAMES, FRANCIS B.	Cincinnati
JAMES, WILLIAM B.	Gibsonburg
JAMES, WILLIAM H.	Cincinnati
JELKE, FERDINAND, JR.	Cincinnati
JENNEY, HERBERT	Cincinnati
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JOHNSON, WILLIAM H.	Zanesville
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LEWIS, P. P.	Steubenville
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POMERENE, W. R.	Coshocton
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RENNER, PHILIP	Cincinnati
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REYNOLDS, A. G.	Painesville
RHEINFRANK, EUGENE	Toledo
RHOADES, E. H.	Toledo
RHODES, GEORGE W.	Columbus
RICHARDS, REES G.	Steubenville
RICHARDS, S. S.	Clyde
RICHIE, W. B.	Lima
RIEGLE, F. P.	Bowling Green
RISINGER, JOHN	Eaton
RISSER, G. W.	Ottawa
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RITTER, GEORGE W.	Sandusky
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ROBERTS, H. MELVIN	Cleveland
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ROBERTSON, C. D.	Cincinnati
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ROGERS, H. KENNETH	Cincinnati
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ROGERS, W. P.	Cincinnati

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RYAN, WALTER A.	Cincinnati
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SANFORD, MARSHALL J.	Lima
SATER, LOWRY F.	Columbus
SAWYER, LOUIS B.	Cincinnati
SAYLER, JOHN R.	Cincinnati
SCHAUFELBERGER, J. W.	Toledo
SCHILLER, HENRY J.	Sandusky
SCHINDEL, JOHN R.	Cincinnati
SCHOEDINGER, FREDERICK H.	Columbus
SCHROEDER, JOSEPH B.	Cincinnati
SCHROTH, GEORGE E.	Tiffin
SCOTT, FRANK C.	Cleveland
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SCROGGS, C. J.	Bucyrus
SEASONGOOD, MURRAY	Cincinnati
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SENEY, HENRY W.	Toledo
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SHOTWELL, WALTER G.	Cadiz

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SINKS, FREDERICK N.	Columbus
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SKILES, ROSCOE C.	Shelby
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SMEDES, JOHN MARSHALL	Cincinnati
SMILEY, JAMES J.	Cincinnati
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SMITH, BARTON	Toledo
SMITH, C. L.	Wapakoneta
SMITH, J. H. CHARLES	Cincinnati
SMITH, RUFUS B.	Cincinnati
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SMITH, WILLIAM WALKER, JR.	Cincinnati
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SNYDER, WALTER V.	Dayton
SOLDERS, CHARLES B.	Cleveland
SOLDERS, GEORGE B.	Cleveland
SOUTHWORTH, CONSTANT	Cincinnati
SOWERS, DANIEL H.	Columbus
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SPEIDEL, ELI H.	Batavia
SPIEGEL, F. S.	Cincinnati
SQUIRE, ANDREW	Cleveland
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STANLEY, WELLS K.	Cleveland
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STERN, JOSEPH L.	Cleveland
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STEWART, GILBERT H.	Columbus

STEWART, GILBERT H., JR.	Columbus
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WEBBER, KARL T.	Columbus
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WELLER, H. J.	Tiffin
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WEST, SAMUEL H.	Columbus
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WESTFALL, RALPH E.	Columbus
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PLACE AND DATE OF MEETINGS OF THE ASSOCIATION

Cleveland	July 8 and 9, 1880
Columbus	December 28 and 29, 1880
Toledo	July 20 and 21, 1881
Cincinnati	December 27 and 28, 1882
Columbus	December 26 and 27, 1883
Columbus	December 30 and 31, 1884
Dayton	December 29 and 30, 1885
Springfield	December 28 and 29, 1886
Toledo	December 27 and 28, 1887
Put-in-Bay	July 11 and 12, 1888
Put-in-Bay	July 17 and 18, 1889
Put-in-Bay	July 16, 17 and 18, 1890
Put-in-Bay	July 14, 15 and 16, 1891
Put-in-Bay	July 13, 14 and 15, 1892
Put-in-Bay	July 19, 20 and 21, 1893
Put-in-Bay	July 18, 19 and 20, 1894
Put-in-Bay	July 17, 18 and 19, 1895
Put-in-Bay	July 15, 16 and 17, 1896
Put-in-Bay	July 20, 21, 22 and 23, 1897
Put-in-Bay	July 12, 13, 14 and 15, 1898
Put-in-Bay	July 11, 12, 13 and 14, 1899
Put-in-Bay	July 10, 11, 12 and 13, 1900
Put-in-Bay	July 9, 10, 11 and 12, 1901
Put-in-Bay	July 8, 9, 10 and 11, 1902
Put-in-Bay	July 8, 9 and 10, 1903
Put-in-Bay	July 6, 7 and 8, 1904
Put-in-Bay	July 11, 12, 13 and 14, 1905
Put-in-Bay	July 10, 11, 12 and 13, 1906
Put-in-Bay	July 9, 10, 11 and 12, 1907
Put-in-Bay	July 7, 8, 9 and 10, 1908

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FREDERICK E. WADHAMS.....57 Tweedle Bldg., Albany, N. Y.

LOCAL COUNCIL FOR OHIO

HARRY B. ARNOLD.....Columbus
ATLEE POMERENE.....Canton
CHARLES T. GREVE.....Cincinnati
ROBERT J. KING.....Zanesville

APPENDIX

ADDRESSES

ANNUAL ADDRESS

BY HON. D. A. HOLLINGSWORTH, OF CADIZ

Acting President of the Ohio State Bar Association

Gentlemen of the State Bar Association:

I sincerely regret, as I feel sure you do, the enforced absence of our worthy President, Hon. Thomas B. Paxton, of Cincinnati, and trust that the first resolution offered at this session may be one of greeting and good cheer to him with a wish for his speedy restoration to health and a safe return home.

His absence at this time will be a distinct loss in interest to the Association.

The duties which have in consequence devolved upon me as the senior Vice President, are, I assure you, quite embarrassing and it is only in the hope that I shall have the generous indulgence and helpful assistance of the entire membership, and especially that of the Executive Committee, that I have obtained my own consent to assuming the responsible duties of a position heretofore occupied only by very able and very eminent lawyers, beginning in 1880, with that great jurist, Rufus P. Ranney.

The printed reports of our Association will show that my membership and attendance upon its annual meetings have been continuous and faithful, but that I have taken very little part in the legal discussions and other speech-making oratory which have heretofore enlivened our proceedings.

I have been a listener, not a talker.

Somewhere it is said that modesty bespeaks one's merit, and, if this be so, I trust my quiet, unobtrusive attendance in the past may excuse any demerit marks I may earn at this meeting.

And in the few remarks I shall make today, I am tempted to violate precedent and depart from the usual beaten path of self-praise and glorification of the bench and bar, especially the former, which have uniformly marked the able addresses to which, with conscious pride and satisfaction, we have listened at our former meetings.

ETHICS OF THE BENCH AND BAR.

The bench and bar have reciprocal obligations toward each other of courtesy and frankness which ought never to be violated by either. The bench, like the placid waters of a mountain lake, can never rise above the level of its source higher up among the springs and rivulets on the mountain side. Its calm serenity and even poise may and should act as a restraining influence, but beyond this lies a danger line.

Arbitrary acts and shallow thoughts wherever found are believed to go hand in hand. The stamp of human weakness rests upon us all.

There are good lawyers and bad lawyers, good judges and bad judges, but the mark of distinction between the good and bad, gloss over and laud our profession as we may, is the same as in any other profession or calling in life, simply the possession or lack of a generous, manly honest nature.

The fiction which draws a distinction between the judicial office and the occupant who for the time being discharges its functions may be and doubtless is all right, but is it not too exacting upon human nature to require a self-respecting lawyer to pay full respect to the position if the occupant be personally unworthy or himself non-observant of ordinary professional courtesy?

On the bench, a crusty, crabbed, arbitrary nature may sometimes pass as evidence of profound wisdom, not only in the imagination of the occupant but also with certain lawyers who habitually seek the sunny side of every judge before whom they practice. But the same crabbed traits of character in a practicing

lawyer are sure to be resented, sometimes quite arbitrarily, especially by over-matured occupants of the bench.

Why is this difference?

In the administration of justice, no greater misfortune can befall our courts than for the judges to have, or even be unjustly suspected of having, a sunny side for special favorites at the bar. A juror who hobnobs with counsel during the progress of a trial becomes an object of suspicion, however innocent his motives. He may be challenged peremptorily without cause or explanation. A reprimand from the bench is not uncommon.

But why, I ask, should not the same rule in principle obtain with an occupant of the bench having a like weakness, assuming both the juror and the judge to be honest and upright? Being human, their conceptions of right and wrong must naturally be the same.

In rare instances, especially in country districts, the juror may have an advantage of the judge. He comes from the unpopulated fields of pure living and upright thinking. He has no place in his rustic heart for secret envy or malice.

However, we must not anticipate the discussion of the report of our committee on Judicial Administration and Legal Reform which has recommended the repeal or practical emasculation of existing safeguards against a prejudiced judge, on the theory, possibly, of the Common Law in relation to the King, that he can do no wrong be he a Jeffreys or a George the Third.

No more important subject will come before us for discussion at this meeting.

The American Bar Association has recently formulated and sent out for discussion through a committee of eminent lawyers headed by Henry St. George Tucker, of Virginia, a code of professional ethics, the third canon of which, intended only for lawyers, seems to me equally applicable to judges, jurors, court officials and all others who in any manner have a part in the administration of justice. It reads:

> "Marked attention and unusual hospitality on the part of a lawyer to a judge, uncalled for by the personal rela-

> tions of the parties, subject both the judge and the lawyer to misconstruction of motive and should be avoided. A lawyer should not communicate or argue privately with any judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or dimunition of the courtesy and respect due the judge's station, is the only proper foundation for cordial personal and official relations between the bench and bar."

Let this canon be adopted. Let it apply universally in principle to all who enter the sacred precincts of the court room, and many of the ugly, half concealed scandals of our courts, especially in divorce cases, will disappear, and the crystal fountain of justice will cease to reflect anything discreditable or discourteous either to the bench or bar.

WORK OF THE BAR ASSOCIATION.

I may also be pardoned, acting only temporarily as President, if I omit on this occasion the usual panegyric of praise of the work accomplished by our Association and its influence in general in shaping the administration of the law. I have not always been in accord with its recommendations. It would, however, be useless, possibly churlish, to particularize. He who does not speak when he should is estopped from speaking when he would.

However, I may suggest, without fear of contradiction from any source, that the Association has lamentably failed in gathering together in a compact body all the lawyers of the State. Only a fraction of them, perhaps not more than one-tenth, appear on our list of members, and among the absent names are some of the most distinguished jurists and public thinkers of the present day.

A learned writer on legal subjects once wrote, with somewhat mystic meaning, that "nothing is more to be dreaded than maxims of law and reasons of state blended together," and straightway, in the same spirit, many lawyers and most judges

seem to have reasoned out that it is quite beneath their dignity and standing to take part in so-called party politics. As a result, they often find themselves in a class of mere obstructionists in the great forward movements of the government of which they should be an important factor.

I dissent from all such notions of professional dignity.

Law and the science of statecraft naturally go hand in hand and the lawyer who fails to study deeply of the science of government, or the statesman, politician if you please, who fails in formative legislation to lay his lines deep in the foundations of the law, will fail in his career.

His place in history will be diminutive.

Had William McKinley, whose great fame as a lawyer-statesman encircled the globe in life and whose memory is a benediction to the whole nation, contented himself with being a dignified lawyer or judge at Canton, eschewing participation in politics, he would doubtless have prospered financially and gone quietly through life enjoying the respect and confidence of his neighbors, and had perhaps a self-conscious feeling of superior dignity among them. He might even have been a more active member of our Bar Association and, instead of the ungracious abuse heaped upon him and his administration, a few years ago, in one of our annual addresses, he might himself have been a dignified critic of the great acts of the government which have placed the American Republic in the fore rank of all nations.

But he chose the wiser course. He recognized in full measure all the duties of good citizenship resting upon him as a typical American.

Another great Ohio lawyer-statesman of the same type is just now in the limelight as the Republican candidate for President. He comes of a family of famous politicians and lawyers and is himself conceded to be one of the ablest jurists of the state or nation, and yet Judge Taft would doubtless feel uncomfortable if confined to the straight-laced ideas of dignity common with some *nisi prius* judges.

His name appears as an honorary member on our rolls and as an invited guest of the Association he recently addressed us on the subject of the Panama canal. But that is about all. Evidently he does not belong to that exclusive type of mankind who get into a rut and stay there, contentedly thinking that its limits are co-extensive with those of the entire universe.

To be strictly non-partisan as becomes an official of our Association, I presume I ought to add here that his probable opponent, Mr. Bryan, is of the same generous type—a great big, brainy man, with human instincts and human sympathies well developed.

There are other Ohio lawyers of almost if not equal prominence in state and national affairs who do not seem to know that the state has a Bar Association. They are not attracted by its meetings, its discussions or its results. Why? Is the difficulty with them or with the Bar Association?

I submit that this inquiry is worthy the candid consideration of every member who has at heart the lasting good of the Association. The lawyers of the state surely have as much organizing capacity as the laboring classes, and yet, in comparison, the compact ranks of organized labor are object lessons well worthy our study, and, in some respects, well worthy our imitation.

In this connection, while reviewing and commending the many acts of the Bar Association to which we all point with pride and satisfaction, it is well to inquire whether or not its achievements as a whole have corresponded to the high aims and purposes of its founders. Have we in all instances come up to their lofty ideals?

At the time the Bar Association was organized, the present constitution of the state had been in operation a little more than a quarter of a century. Its provisions had from time to time been under review by the Supreme Court, composed of such jurists as Ranney, Thurman, Bartley, Swan, Kennon, Scott, Day, Welsh and others of equal ability—constitutional lawyers of great breadth and power, whose very presence on the bench was an

inspiration. Intellectual giants, independent thinkers, they at first naturally divided in thought along the line of a liberal or strict construction of the new instrument. Masterfully, however, they reasoned with each other, conceding something here and there for sake of agreement, and endeavoring to elucidate and make plain its doubtful phases, until finally, after repeated decisions, a somewhat liberal meaning and effect became fairly well established. The bar generally and the intelligent people of the state acquiesced. Civil and property rights grew up under such construction and they were supposed to be fixed and secure.

The rule of *stare decisis,* in time, also seemed, to the average legal mind, to add something to such security.

But, presto change, soon after the State Bar Association was organized and began the discussion of all kinds of legal questions at its annual meetings, sometimes, possibly, as much for the sake of argument as any thing else, these old problems of the constitution, supposed to have been settled, reappeared and began again to be questioned.

The ball of discontent was set rolling. Able and distinguished jurists began to doubt. A speck on the judicial horizon, no bigger at first than one's hand, soon grew and grew until seemingly it overshadowed the entire judiciary of the state.

We all know the result.

Decisions, admittedly able but differing from the former rulings of the Supreme Court, were announced, and conditions were thereby so unsettled that a conservative governor deemed it necessary to call the General Assembly into extraordinary session to provide a remedy for the resulting chaos and confusion.

The result has been a municipal code and other hasty legislation which will require perhaps another quarter of a century of judicial interpretation to accurately define and fix their meaning.

Meantime, as a Bar Association we rejoice, and, as an original proposition, I am free to concede rightfully, in having at last found judges of sufficient courage and conviction to announce strict legal principles from the bench, letting the chips fall where they may.

But what of the people of the state? What of the great body of lawyers, numbering about nine-tenths of the bar of the state, who do not attend or thoroughly enter into the reform spirit of our Association? May they not seriously and pertinently inquire, considering the increasing number of decisions by a divided bench what might happen if, after the lapse of another quarter of a century, our Supreme Court should find itself with a majority of new members, disciples of these old time jurists, imbued also, like our present excellent judges, with courage enough to inquire into and overturn established decisions not in accord with their own honest convictions of constitutional construction.

The thought of it is alarming. It suggests uncertainty and doubt, the most serious defects known is to the modern administration of justice.

CERTAINTY IN DECISIONS.

The law ought never to be a matter of see-sawing. Certainty is essential to confidence in our courts. The fewer dissenting opinions published the higher will be the respect and confidence of the bar, and especially intelligent laymen, in court reports. Greatly to be commended, therefore, is the present method of reporting divisions in our Supreme Court by indicating the names of concurring rather than dissenting judges.

But still intelligent people and disinterested lawyers will read between lines and inquire the meaning of the doubt and uncertainty thus clouding so many of our modern decisions. The number of three to three affirmances which determine, without right of appeal or reargument, important individual rights is attracting attention.

Of course, a conscientious judge can not concur in a decision at variance with his own honest convictions any more than an honest juror should be expected to assent to a verdict contrary to the facts as he sees them. Neither should be unduly influenced to agree with his fellows.

But what reason can be assigned for the great increase in modern practice in the number of decisions announced by divided

courts, and in the number of disagreements in important jury trials?

It would be unjust to suggest haste in reaching conclusions or unusual tenacity in clinging to individual opinions, once formed.

But, I repeat, what is the cause?

I yield to no man in profound respect for our Supreme Court, or the present personnel of the judges, but as food for thought I trust we may, without the slightest reflection upon the judges, past or present, compare the record work of the court at different periods.

A single comparison will suffice to illustrate my meaning:

In the First Ohio St. Reports, covering 703 pages, there are seventy reported cases, the opinions being written by five judges, Ranney, Thurman, Corwin, Bartley and Caldwell, and all concurred in by a full bench except eleven, or about sixteen per cent. of the whole number.

In the 74th Ohio St., the last full volume at hand, covering 421 pages, there are thirty-eight reported cases, the opinions being written by six judges, Shauck, Price, Crew, Summers, Spear and Davis, twenty-three of which, or about sixty per cent., not appearing to have received the concurrence of a full bench. This does not include the numerous unreported cases the memoranda of which cover over one hundred pages of the same volume, very few of which received such concurrence, and most of them seem only to have been considered by three judges.

The Supreme Court of Ohio is not an exception; practically the same conditions exist in the Supreme Court of the United States, the most dignified judicial body in the world.

Such uncertainty in the decisions of our higher courts is embarrassing to lawyers and mystifying to intelligent clients. It breeds distrust of the administration of law in general, and often begets confusion among courts of concurrent jurisdiction, and sometimes between State and Federal courts.

It is humiliating to the profession to have to advise a client that his rights depend on whether he seeks relief in a State or

Federal court. A single instance in my own practice will serve as an illustration:

Two farmers, living on adjoining farms near Scio, Ohio, leased their respective farms for oil and gas production to the same lessee, using identical blank forms of lease.

The habendum of each read:

No one connected with the leasing doubted the right of the lessee to extend the leases indefinitely by the payment of rentals.

> "To have and to hold the same unto the lessee, his heirs and assigns, for the period of two years from the date hereof and as long thereafter as oil or gas is found in paying quantities thereon, not exceeding in the whole the term of twenty-five years. * * * In case no well shall be drilled on said premises within twelve months from the date thereof, this lease shall become null and void, *unless the lessee shall pay for the further delay at the rate of one dollar per acre at or before the end of each year thereafter until a well shall be drilled.*"

No well was drilled on either farm within the year, but before "the end of the year thereafter," a tender in full under the rental clause was made by the lessee. The tender in each instance was refused under the advice of interested parties who induced the lessors to believe that the payment of rentals could not operate to extend the terms beyond the two years specifically mentioned.

Meantime, by reason of nearby oil development, the lands became very valuable as oil territory and the lessors each accepted a cash bonus and executed new leases to other parties.

Litigation ensued promptly between the first and second lessees. The first case (Brown et al vs. Fowler et al., as subsequently reported in 65th Ohio St., 509) was commenced in the State Common Pleas Court, and the other (Allegheny Oil Co. vs. Snyder et al., 106 Federal Reporter, 764) in the Federal Circuit Court, at Columbus, Ohio.

In the state court the holding was in favor of the first lessee and the case was appealed to the Circuit Court.

In the Federal Court, Judge Thompson made a similar holding and an appeal was taken to the Circuit Court of Appeals at Cincinnati.

The State Circuit Court next passed upon the question, reversing the Common Pleas in an elaborate opinion, and the case was at once taken on error to the Supreme Court.

The case in the Federal Circuit Court of Appeals then came up for hearing and a transcript copy of the opinion in the state Circuit Court was duly exploited by counsel without effect, the court unanimously affirming the decision of Judge Thompson in an opinion delivered by Justice William R. Day, now of the United States Supreme Court, wherein he reviewed the opinion of the Ohio Circuit Court and held that the first lease was valid and that the rental clause meant just what the average mind of a business man would understand it to mean.

Manifestly, to weaken the effect of a precedent of such high character when the other case should come on for final decision in the Ohio Supreme Court, the losing party applied to the United States Supreme Court for a writ of *certiari* and on the hearing the question was elaborately argued on its merits by able counsel, among whom was former President Harrison, but the writ was denied, leaving Justice Day's opinion to stand as the law of the case in the Federal Courts.

Oral argument had been requested in the State Supreme Court and in due time the case there came on for hearing. I had the affirmative and, with a confidence born of such high authority, I modestly departed from my own printed brief and simply called attention to the Federal decision on the same identical point, urging as forcibly as I could the great weight to which it was entitled as a precedent.

The case involved about $100,000 to my client and we naturally awaited the result with high expectation.

It came in the usual course. See opinion beginning on page 520, 65th Ohio State Reports. It does not refer to the Federal decision in any way. It quotes elementary authorities to establish elementary principles in general, but seems to studiously

avoid mentioning the opinion of Justice Day, backed by the full force and great ability of the United States Supreme Court.

A rehearing was denied. The question was settled, as well as my client, beyond a possibility of review, but it left me groping in the dark for an explanation satisfactory to my two clients why one should win and the other lose in important litigation involving the same facts and the same law. The dullest client in such situation could see that it was a glaring fault in the administration of justice or an ordinary mistake made by one of the other of two great courts. But which? Aye, there is the rub of uncertainty.

I mention this special instance at some length only to illustrate the thought I have in mind that uncertainty of results where uniformity is supposed to exist, in the administration of justice, is the real cause of the want of confidence in both the bench and the bar, too common among intelligent as well as ignorant people.

Is there any remedy? Echo brings back no sufficient answer from the tombs of costly law reports constantly piling up in our already overcrowded law libraries.

Recently, a writer of some note has suggested the impractical idea that in courts constituted of more than one judge, they should be required by law to agree, like jurors, before announcing a decision.

Another writer, of perhaps a more practical turn of mind, has suggested that in every case of disagreement the judges, on their own motion, after plainly stating the points of difference, should invite or allow re-argument by counsel.

Such suggestions may be folly, but they serve to emphasize and give point to a most grave criticism of the judiciary made by some lawyers and most of the intelligent people of the state.

If by reference to it I have set any one to thinking, I shall be content.

SCINTILLA RULE.

Another matter of grave apprehension on the part of the people of the state, and some lawyers, is the subtile attacks and

encroachments recently attempted and partially accomplished by the influence of our Bar Association, and other powerful forces, on the recognized province and organization of the Common Law jury.

It may not be orthodox to mention this subject in this presence, but I hope, nevertheless, it will be excused in a member from the rural sections, where both jurors and judges are supposed to be men of character and standing.

In consideration of this subject, it is well to revert to the original constitution of the jury system, and the scrupulous care with which it was safeguarded from undue influence from the judges or even from the crown itself.

All lawyers are supposed to be familiar with the history of the jury system and any extended remarks here would be out of place.

Sir William Blackstone speaks of it as "the glory of the English law." "The impartial administration of justice," said he, in his Oxford lectures on the Common Law, "which secures both our persons and our properties, is the great end of civil society. But if that be entirely entrusted to the magistracy, a select body of men, their decisions, in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity; it is not to be expected from human nature that the few should always be attentive to the interests and good of the many."

He also gave warning against "secret machinations which may sap and undermine" the jury system.

Every precaution was taken to provide absolutely impartial and independent jurors. Challenges were allowed with great liberality and either party might demand a struck jury without question or cause.

Practically this same system was incorporated into the laws of Ohio, and, until recently, it remained in full force.

The trustees of the various townships of a county, generally intelligent men, were required by law to select from their well-informed neighbors a proportionate number of competent

electors to serve as jurors and from their names the clerk of the court and sheriff selected the regular panel of jurors by lot.

If any litigant called for a struck jury, thirty-six names were selected by county officials having no connection with the courts, and from this list each party struck off twelve names and the remaining twelve constituted the panel. Even after this, a challenge might be made of any juror for cause.

Thus every litigant felt and was secure in his right to an absolutely impartial jury to try his cause.

How is it today? Have we not entirely departed from the ideal jury of the Common Law?

1. The struck jury is abolished. No litigant, however important his case, may call for a special panel.

I regard this as the worst blow the jury system ever received.

2. Instead of the selection of the regular jurors being independent of the courts, it is now placed almost directly in the control of the Common Pleas judges. They select in each county a jury commission of four and instruct them exactly what kind of jurors to select. Even the law itself is violated at times to secure desired results. All electors, for example, are elegible for jury service, made so by statute, and yet I have here a blank form of instruction, printed and sold by one of the leading blank publishing houses of the state, and used, I know, in some counties by the Common Pleas judges, in which, after the formal appointment of the commissioners and before the signature of the judges, the following additional order is inserted:

> "The clerk of said Court of Common Pleas of ———— county will make a record of such appointment upon the journal of said court, and issue a certificate thereof to each of said commissioners, and direct them to meet in the office of the county auditor, on the Fourth Monday of May, 190—, at 10 o'clock in the forenoon, and there select ———— judicious and disinterested *free-holders* having the qualifications of electors of said county to serve as jurors therein."

FREE HOLDERS! By what authority does any one in Judge or layman, presume to exclude from jury service men of intelligence and character simply because they do not own real estate? The suggestion is repugnant not only to the letter of the law but to the spirit of the Ohio constitution. Away with all such insidious attempts to "sap and undermine" the jury system. They are the very acts against which Blackstone gave early warning.

Is not our Bar Association directly responsible for such pervisions of the law? Have we not, as an Association, openly and designedly, in the presence of the agents of such publishing houses, and even of the judges of the state, sought to discredit the jury system of the Common Law—the early jury system of Ohio, in fact, in the days of Ranney and Thurman?

If not, what is the meaning of certain inflammatory speeches heretofore indulged in against the so-called "scintilla rule," in the presence of judges whose duty it is to observe and obey all the laws of the state, written or unwritten, until repealed by the legislature?

Three years ago, one of our most honored presidents announced with emphasis, in speaking of the "scintilla rule" in his annual address, that "in Ohio, owing partly, if not wholly, to the sentiments developed in this body, it is in process of gradual and ultimate extinction by the decisions of our appellate courts. It only remains for the Common Pleas judges to exercise intelligently the courage of their convicitions, and thereby discourage the bringing of many actions of no merit, and whose success depends solely upon the ability of those who prosecute them to arouse sympathy or prejudice in the minds of jurors."

Now, in the name of all the sharp quillets of the law at once, upon what meat doth this our legal Caesar feed, that he has grown so sure in prophecy?

Modestly, I dissent from any such assumption of superior knowledge as to what our appellate courts may or may not decide in corporation or other cases pending before them. Such

expressions, if true, are not creditable either to the judiciary or the Bar Association.

Better by far the modest suggestion of our worthy president last year, when, in referring to the same subject, he said he "did not propose to enter into a discussion of its merits, but only to go upon record as expressing my own judgment that the rule should in some way be eliminated from our practice."

And, better still, an opinion of the Fifth Circuit Court, delivered June 7, 1908, and filed at Carrollton, in Carroll county, reversing a Common Pleas decision in which the trial judge, a most excellent lawyer, possibly convinced as to his duty by reasoning heard at our annual meetings, had undertaken "to exercise intelligently the courage of his convictions" by directing a verdict for defendant, but in reversing which the Circuit Court unanimously said:

"The scintilla rule is still in force in this state, and whilst there has been some conflict as to just what that rule is, and when a case falls within it, we think the concensus of opinion is that if men of rational judgment can draw but one conclusion from the evidence, then it is a question for the court; but, on the other hand, if rational minds may honestly draw different conclusions from the same state of facts, then the question is one of fact and the case should be submitted to the jury under the scintilla rule."

This, I believe, is the latest judicial utterance on the subject in Ohio, and as the Fifth Circuit Court judges, at least a majority of them, are members of this Association, it may be said to be the response of an honest judiciary to the somewhat revolutionary suggestions of some of our leaders.

The subject should be treated fairly by our Association. Let it, if desired, be presented to the General Assembly, where it belongs, in a manly, straight-forward way. It is the only authority with power to act. If it approves of the abrogation of the rule, well and good; if not, let the matter rest without undue urging in the conscience of the judges of the state, who

are sworn to enforce not make the laws. Let it rest as it is unless challenged by the law-making power of the state.

Apropos of the general subject of jury trials, I again quote from Sir William Blackstone:

"A competent number of sensible and upright jurymen, chosen by lot from among those of the middle class, will be found to be the best investigators of truth and the surest guardians of public justice.

"The most powerful individual in the state will be cautious of committing any flagrant invasion of another's rights when he knows that the fact of his oppression must be examined and decided by twelve indifferent men.

"This preserves in the hands of the people that share which they ought to have in the administration of public justice and prevents the encroachments of the more powerful and wealthy citizens.

"Every new tribunal erected for the decision of facts, without the intervention of a jury, is a step toward establishing aristocracy, the most oppressive of absolute governments."

Prophetic words of wisdom. Had this great light of the Common Law, instead of lecturing at the University of Oxford, been addressing this Association with a knowledge of its trend of thought on this important subject, he would doubtless have added his warning that any encroachments upon the recognized province of the jury, such as that suggested by an arbitrary judicial abrogation of the "scintilla rule," would simply be a "step" in the same aristocratic direction.

The disparagement of jury trials in certain quarters is wrong. Modern encroachments on this sacred bulwark of our liberties are unjust and dangerous. Their insidious nature has become alarming even to conservatives, and any one who reads the signs of the times aright may well, instead of prophesying further encroachments by the judiciary, consider the probable force and effect of the gathering storm of protest among the people. Fortunately, the tide seems to be turning in influential quarters.

Only recently, June 5, 1908, in a public address at the Chicago-Kent College of Law, one of the judges of the United States Circuit Court of Appeals, Hon. William H. Seaman, voiced an emphatic protest against this modern tendency to disparage the jury system. He pointed to the verdict acquitting William H. Haywood of complicity in the murder of Governor Steunenberg as a righteous one, and said that it was evidence that American juries could weigh the testimony in a case without being swayed by public clamor or intimidated by unfair denunciations in high quarters. "The verdict," said he, "was a remarkable vindication of the jury system in America."

He might also have cited other sensational trials. What was it but honest, sturdy, reasoning manhood that enabled the first Thaw jury to withstand the eloquent pleading of famous counsel, aided and abetted by a venal press, to acquit the prisoner on grounds abhorrent to plain common sense law?

What was it that caused the second jury to stand pat against the force and eloquence of the district attorney, aided by all the police and detective force of New York City, and refuse either to hang or release the crazy madcap whom they wisely consigned to an asylum for detention?

What is it but confidence in the jury system that induced the New York courts, a few days ago, after vainly trying to determine it themselves, to order a re-submission of his insanity to a jury to determine whether or not he has sufficiently recovered to be at large? It is a little difficult to understand the keen insight in reaching correct conclusions by a jury of twelve honest men, but my mind the present situation in the Thaw case is a most wonderful vindication of their reasoning powers.

All now admit that the young man was, if he is not now, a dangerous lunatic, unsafe to be at large, just as both juries determined after months of effort back and forth to confuse, mislead or convince them otherwise. Whither are we drifting in Ohio on this important subject? Are we preserving the old land-marks, the old safe-guards? If not, what is our duty as a Bar Association?

But enough. I beg pardon for allowing my remarks to run on at such length. I beg pardon also for suggestions not fully in accord with sentiments heretofore indorsed by the Association, but I plead in excuse that a lawyer, as much as a judge, should be true to his own convictions of right in the expression of any opinion on any subject.

There is one subject, however, one object of the Association, on which we can all agree, that is, as stated in the constitution, the "cultivation of cordial intercourse among the members of the bar."

The social gatherings and glad handshake at our annual meetings are to me of more consequence than all the legal disquisitions the executive committee can arrange for our edification.

It is restful to get away from the strife, the contention and the scrapping of the court room. It is pleasant to meet here, judge and lawyer, on an equality. It is good, in fact, to occasionally quit thinking.

Along these lines, I yield to no member of the Association, and, therefore, in closing, I most earnestly and confidently renew my request for your indulgence and assistance in the discharge of the active duties which have at this meeting unexpectedly devolved upon me.

THE LAW'S DELAYS

BY HON. WM. BOURKE COCKRAN, OF NEW YORK

Mr. Chairman and Gentlemen of the Ohio State Bar Association:

The title I have chosen has long been a commonplace of literature and public speech, but the task which I have undertaken presents an aspect of it, which, in my judgment, is entirely new—a recent result of conditions without precedent in the experience of mankind.

The law's delays have been subjects of complaint in every country at all times ever since civilized men have attempted the settlement of disputes peaceably, according to fixed rules, which should be applied and enforced only by men of sufficient learning to understand them, as distinguished from the period when disputes were settled more readily but more roughly by rude warriors entirely unlettered, untrained in any profession except that of arms. I do not mention these delays merely to deplore them —they have already been deplored in every age, in every tongue and in every clime—but to point out certain reasons for believing that, owing to the dominant position occupied by the courts, they constitute a peril to our system so serious that they must be ended if this Republic is to survive.

The main object of government and civilization is the administration of justice. There has never been a state of society without some judicial system however crude or inadequate it might be.

Francois Marie Arouet, commonly known as Voltaire, begins his "Histoire des Parlements,"—a work which though generally assigned to the field of belles-lettres is the most readable legal treatise of which I have any knowledge—and one of the most exact in its historical statements—by stating that if any governmental authority can be discovered anywhere amid the confusion and anarchy in which the world was plunged from the

banks of the Vistula to the Pillars of Hercules, during the period between the death of Charlemagne and the disintegration of his empire early in the ninth century and the establishment by Louis LX, commonly known as St. Louis of France, of the supremacy of the French Kingship during the thirteenth century, it was in the Barlements. The term he traces to the Celtic word "parler" or "parlier," to speak, and he described a feudal parliament as a gathering of chiefs summoned by the overlord or king —who held primacy among them rather than authority over them—to discuss matters of general importance, principally the settlement of disputes amongst their own members, as distinguished from a gathering of the same chiefs summoned by the same authorities to wage war. Whether they were summoned for battle or discussion, these feudatories always attended with arms in their hands. When they met for discussion, whatever subject was submitted to them, whether it was the making of war or the settlement of a dispute, the matter was decided upon the spot, not always according to the weight of arguments advanced but often according to the weight of arms wielded by the contending parties.

When industry began to awaken largely as feudal laws under which everything possessed by a vassal was the property of his lord, were relaxed in certain localities, communities or communes, by special instruments called charters, and the inhabitants on certain conditions—usually the payment of a fixed tribute in money—were empowered to hold and enjoy the property produced by their labor or at least a large part of it, production became active and as property grew in volume disputes about possession and title to it soon arose. Peace being the condition of successful industry, tribunals for peaceful settlement of these disputes became a necessity of every industrial society. The only way in which settlements could be made at once peaceful and effective was by basing them on justice. The essence of justice being equality, it became necessary to establish fixed rules by which all cases similar or identical in character would be decided. Obviously these rules could be applied only by men

of learning—at least of sufficient learning to make themselves familiar with the rules or laws they were appointed to enforce. In those days only the clergy were instructed in letters, and therefore, the higher ecclesiastics were soon admitted to the parliaments. As property became more abundant regard for justice grew keener and the influence of the learned man steadily rose while the armed man found himself of less and ever diminishing consequence.

The subsequent development of political institutions was the result of attempts to improve the administration of justice. In some places, as in France, the parliament became essentially a judicial body. To meet the requirements of justice it became subdivided into several branches, each known by the city in which it sat. At the time of the revolution there were, I believe, seventeen parliaments for the kingdom. Their functions became almost entirely judicial, their legislative power gradually shrunk to a mere form. The king's edicts indeed needed to be registered by the parliament before acquiring the force of laws. But though parliament could discuss them, or remonstrate against them, even decline to register them, the king in a bed of justice could command registration, and the command, even when it proceeded from the lips of an infant, must be obeyed, and was obeyed, without a word of further discussion or one moment of additional deliberation.

The bed of justice extended its jurisdiction also to judicial proceedings. The king, as supreme head of the state, the fountain of all authority, legislative and judicial, could summon the parliament to a bed of justice, and take any cause pending before it into his own hands and dispose of it as he pleased—a power that was exercised sometimes, though not frequently. One of the latest and most conspicuous instances was towards the close of Louis XV's reign, when D'Aiguillon having been charged by the parliament with a gross misuse of his office, which had resulted in plunging the whole country into starvation through a sordid speculation based on manipulation of the Corn Laws, the king

took the process of this favorite into his own hands and quashed it.

In England the evolution of its judicial establishment was along lines somewhat different. There the feudal system was not introduced until after the conquest of 1066. The conqueror himself, as Duke of Normandy, a vassal of the French monarch, keenly alive to the inherent irreconcilable hostility between a feudal king and his vassal barons, sought to utilize from the very first the personal consequence acquired by his great victory at Hastings in extending the influence and authority of the Crown over the judicial establishment. In this he was largely aided by the excellent judicial system which he had found already established and in full operation. The Saxon jurisprudence established by King Alfred and perfected by Edward the Confessor, was perhaps the most perfect the world has ever seen. Its essence was to bring justice prompt and exact to the doorstep of every inhabitant. Every controversy was settled in the place where it arose. The Court of The Hundred took jurisdiction of controversies arising between inhabitants of a locality not exceeding one hundred in population; the County Court of Causes between inhabitants of different hundreds; while the Aula Regia, the Great Council of the King, exercised a general judicial supervision, moving throughout the country adjudicating controversies beyond the jurisdiction of inferior courts, hearing appeals from the decrees, laboring steadily and successfully to make justice supreme over the whole kingdom.

This excellent system the Normans adopted to the conditions established by the conquest.

The Conqueror and his successors confirmed the Aula Regia as a tribunal for controversies arising between subject and subject, a jurisdiction which it has exercised down to a very recent period, as the Court of Common Pleas. In causes where the Crown itself was affected, the subject addressed his appeal directly to the king in what became known as the Court of "King's Bench," because the monarch was supposed to sit there in person, though in fact the appeal was actually heard by his chief justici-

ary, who in discharging that function represented the person of the sovereign.

In collecting the king's revenue his officers frequently provoked complaints from his subjects. These were referred originally to certain barons charged to deal with them according to justice and the law of the land. In time it was found that satisfactory adjudication of such controversies could be effected only by men specially trained to deal with them, and thus the Court of Exchequer was established, the judges of which, down to a very recent period, were always styled "Barons of the Exchequer." By certain fictions of pleading all distinction between the powers of these different tribunals were practically obliterated, and the Courts of Common Pleas, Exchequer and King's Bench exercised general jurisdiction throughout the country until the reorganization of the judicial system some thirty years ago.

Above and beyond all these courts was the king charged as supreme guardian of justice, with the duty of making justice triumphant over every force or power, even over the law, where enforcement of the law according to its strictest letter, would result in the perpetration of palpable wrong. As for instance, a contract, valid upon its face, and therefore unimpeachable in a court of law, might nevertheless have been extorted by force or induced by fraud. Should an attempt be made to take advantage of such an unconscionable instrument the king, through the keeper of his conscience, the lord chancellor, would issue his writ prohibiting its enforcement. This was the writ of injunction which has come down to us through all these centuries and which in these later days has been much and widely discussed. This was equity as distinguished from law—a distinction originally clear and sharp, now practically obliterated by the progress of jurisprudence.

In England the exercise of the king's conscience to do equity and the intervention in France of the king in judicial proceedings through the bed of justice sprang theoretically from the same necessity of providing against injury to justice by invariable and

unbending enforcement to the strict letter of the law. There was, however, one distinction between them, and it was in the highest degree important: The bed of justice in France remitted to the judgment, will or caprice of a man who happened to be king the duty of making justice triumphant over law. Equity, in England, always followed certain fixed and definite rules. The merits of both were proved by the fruits they bore. The bed of justice became an instrument of oppression, a shield of wrong, a fountain of peculiar infamy. It has disappeared from civilization engulfed in the violence and ruin and bloodshed which overwhelmed the system of which it was a vicious feature. Equity remains a feature—perhaps the best feature of English jurisprudence. It continues to this day a bulwark of order, a monument of civilization—the strongest, the last entrenchment and strongest rampart of justice.

From all this it is clear that the growth of civilization has been the steady substitution of the learned man for the armed man in settlement of disputes.

The superiority of adjudications by rule over adjudications by force is manifest, but to such decisions two things are necessary prerequisites: Examination of statutes or precedents, and deliberation on their significance or application. These, of course, involve delays and these delays have become a feature of judicial procedure everywhere. In every civilized community they have become subjects of complaint but no one has yet suggested an effective remedy for them, and my object in addressing you is to say and endeavor to show yet that the time has come when a remedy for them must be discovered and applied, if this Republic is to last through the century which has opened. To cure them is no longer merely a work of merit which this government should perform to establish its excellence, but a work of necessity, which it must perform to maintain its existence. I say this, because while delays in judicial procedure are common to every form of civilized society, they have assumed in this country a peculiarly sinister aspect owing to the dominant position occupied by the courts under our form of government.

In other countries they are blemishes upon one feature of the public administration; in this country they are abuses which imperil the foundations of our whole political system.

At first blush this may seem like the language of exaggerated rhetoric. Slight reflection will convince any thoughful man that it is a sober statement of actual conditions.

It has been a feature of great events in the history of the world that very frequently they passed without attracting much notice from the generations witnessing their accomplishment. In all ages men have participated in momentous transactions deeply affecting civilization without realizing the magnitude of the movements to which they contributed. And so it seems to me few of us have realized the tremendous and ominous significance of one element in our political condition which the last few weeks have made conspicuous.

The courts which since the establishment of our government have been made objects of universal respect and admiration have become within the last few weeks objects of discussion and even criticism. Now the force and effect of that change in the popular attitude toward the judiciary few of us, I fear, have paused to realize, and yet if there be any fact established beyond a doubt by the history of the whole world and of all the nations into which the sons of man have at different times become organized, it is that in every government, every political system, whether it be a republic, a despotism or an oligarcy there must be some feature commanding universal respect and attachment amounting to reverence, or the system itself is doomed to destruction. It may survive a while but the seed of death is in its body. All the forms of government may survive, its display may be more splendid, its officers more numerous than ever none the less its destruction, its final collapse is a mere matter of time unless the universal attachment which it lost is regained.

In a monarchy, though it be absolute, though there be no legal check on royal authority, yet if the king be not universally revered as the embodiment of justice and law, the kingship itself is doomed. A monarch may still have a large army apparently

subject to his command, fleets nominally his may still ride the seas, the courts may be his servile instruments, parliaments of councils of state, mere machines to register his decrees, yet the moment universal reverence is withheld from him the end of his authority is in sight. A system that is doubted by its own subjects is a system that is in danger, a despotism that is discussed is a despotism that is doomed.

Charles the First refused to recognize this truth and in attempting to violate it he lost his head and he lost his crown. The doom of his pretentions to boundless prerogatives was pronounced not when he mounted the scaffold, at Whitehall, not when he heard Bradshaw, with many words pronounce sentence of death in the High Court, but when surrounded with armed men he appeared in the House of Common, and seating himself in the speaker's chair, demanded that five members be delivered up to him. When the speaker, instead of obeying, answered: "I have neither eyes to see nor lips to speak except as I am commanded by this House whose servant I am," and those words pronounced with every outward manifestation of respect and homage by a man kneeling on the floor pronounced the death knell of the man seated in the chair to whom they were addressed were applauded by an overwhelming majority of the people. Absolutism thus challenged, denied, disputed was then and there overthrown—ended, even though for several years afterward the king continued to assert it—and armies supported his assertion.

Carlyle dates the fall of the French monarchy not like other historians from the convocation of the states general in 1789, but from the death of Louis XV. That king who thirty years before was an object of such attachment and reverence that when he was supposed to be fatally sick at Metz, the whole population crowded into the churches praying fervently for his speedy recovery, was suffered in 1774, to die at Versailles without any expression of regret, or even of interest, beyond an occasional ribald jest, from the people he had oppressed. And the decline from universal respect to universal reprobation and scorn thus

made manifest was held by the author of the French Revolution to be the real overthrow of the kingship.

I myself should fix the end of the French kingship a few years further back when the Parliament of Paris having undertaken to remonstrate against the royal edicts imposing cruelly oppressive taxation was summoned to a bed of justice and there commanded to register them forthwith, which command having been obeyed silently but sullenly the next morning the pedestal with the figures Power, Peace, Prudence and Justice, at its four corners which supported the statute of the king just erected in the new Place Louis Quinze, now known to all the world as the Place de la Concorde, was found to have inscribed on one of its sides the famous couplet:

"Oh, the beautiful statue, oh, the splendid pedestal—
The Virtues are on Foot and Vice is in the saddle."

The derisive laughter of the Parisian populace gathered round these lines decreed the end of the institution thus reviled —foreshadowed clearly and inexorably the scaffold erected during the next generation on the same spot for the execution of that king's immediate successor.

Wherever on the other hand, political institutions are popular, wherever they are held in universal respect, the government of which they are features is always growing in power and consequence, not necessarily by any specific grant of authority but by the stronger force of popular sanction. The highest grant of authority any political system can attain or enjoy is approval of the persons affected by it. In England, for two centuries, the Parliament has been an object of popular reverence and there the power of Parliament has become supreme. Theoretically the king is still the fountain of law. Every statute begins with a declaration that it is enacted by the King's Most Excellent Majesty—the Lords Spiritual and Temporal and the Commons being described as merely assenting and advising. But as a matter of fact during the last two hundred years the voice of the Commons has been dominant in the state because that body clearly enjoyed

the largest measure of popular respect and therefore was held to voice most faithfully popular will. The government built upon full recognition of this predominance is one of the most stable in the world.

With us the judiciary is the one feature of government which since its foundation has grown steadily in public repute, until at the conclusion of the nineteenth century it dominated our whole constitutional system. And as the judiciary grew in public esteem so also the system of which it is the principal feature has grown in strength and security.

In a political system where everything was regulated or at least deeply affected by party discussions and party interests—where matters not merely of national policy, but details of administration down to the selection of local policemen and street sweepers—were governed largely by considerations of party advantages, the judiciary, by common consent, was held above and beyond the domain of legitimate partisan activity.

Even so late as twelve years ago criticism in a party platform of a judicial decision reversing by a majority of one the position taken unanimously by the same court on an identical question some years previously, provoked such a storm of protest, that it was held by many to have explained the catastrophe which subsequently overtook the party adopting it.

Now, all that is changed. The courts recently have been criticised freely, in some instances condemned openly. These criticisms are no longer confined to the reckless, the obscure, the degraded, or the rejected of the people. They have been voiced by many men in high position including among their number an official no less exalted than the president of the United States. And far from suffering a loss of popularity in consequence, we have actually seen him within a few days exercising extensive—some say decisive—influence over the convention called to nominate his successor, which at his suggestion (as is generally believed) embodied in its platform a declaration amounting in effect to a criticism of judicial deficiency. And all this amid demonstrations of approval, popularity, and attachment which no

other incumbent of this great office ever enjoyed at the opening, much less at the close of his term.

It is true that the reference to the courts finally adopted by the late Republican convention merely declares that, hereafter, injunctions should not be granted, except as they have been granted. (Laughter and applause). Still the declaration that something (though precisely what is not made clear) should be done to improve the administration of justice, amounts to a distinct statement that something requires improvement. Moreover, it is undeniable that the object of mentioning the courts was to satisfy a large body of voters whose attitude toward the judiciary for many years has been one of outspoken complaint and undisguised distrust. This taken in connection with the strong probability (amounting to a certainty) that criticism of judicial procedure is likely to be much more outspoken in the platform of the other party is a fact of transcendant importance in the evolution of our system sufficient.

Now it is easy to decry these criticisms and denounce them as mere evidences of a tendency to anarchy and disorder. None the less they are so widespread that both parties embodying at least three-quarters of the population, feel impelled to reecho them, and this remains a fact portentous and conspicuous, a fact that cannot be denied, that no sane man will undertake to ignore, which lawyers and judges are especially bound to measure and meet.

Herbert Spencer opens his elaborate exposition of his philosophy by stating that as there is a soul of goodness even in things evil, so also there is a soul of truth in things erroneous.

We have seen there is a soul of goodness in the evil things which we have been discussing and deploring—the law's delays. They are direct results of attempts to improve the relations of men to each other in civilized society. And so even assuming that these criticisms of the judiciary are in the main, erroneous, yet it is probable—aye, certain—that there is a soul of truth in them—that there is in our judicial system some defect which will explain even if it could not justify this recent unmistakable de-

cline of the courts in popular respect. This defect it is the duty of lawyers to discover and by remedying it, dispel the errors it encourages, the criticisms it provokes, the distrust it engenders, the danger it portends.

One thing is absolutely clear. From this cloud of examination, discussion and criticism, in which they are now enveloped, the judiciary will either emerge triumphantly, strengthened, immune hereafter from criticism, or even discussion—except so far as expressions of praise and confidence may constitute discussion —or else it must perish as an independent feature of government and decline to the subordinate position occupied by courts of law under other political systems.

In other countries the courts are restricted to adjudicating controversies between individuals without any power to annul or review legislative enactments. To restrict them similarly in this country would change the whole structure of our government radically, completely, and as I think, injuriously.

This government having been formed above all to establish justice as appears by the first words of the preamble to our Constitution, the courts inevitably became its dominant feature. Obviously no agency except a judiciary entirely independent could administer such a system effectively. It is the distinctive features and crowning glory of our government that like the Christian revelation, it is established *"propter homines"* on account of men. All its operations being intended for the benefit of men, all its benificence is exercised through the medium of the judiciary. Only through the direct intervention—or with the permission and sanction—of the judiciary, can the government come in contact with the citizen. The legislature cannot disturb my property or restrain my liberty. It cannot by bill of attainder consign me to the scaffold. It cannot take one penny of my possessions or affect them except as it affects the possessions of all my fellows. It cannot levy a tax to impose a duty on me except with the permission of the courts. As the courts exercise absolute power to determine whether each act of the legislature is of binding effect or of no force whatever, it follows the legislature can-

not enact laws. It can only propose laws which the judiciary reject or sanction according as the judges consider the Constitution has been obeyed or disregarded. Neither can the executive affect the citizen except through the courts. He cannot touch a hair of my head; he cannot regulate the clothes that I wear; the means of transportation I employ. The most he can do is to set the law in motion against me if I have violated its provisions. The result of such action on his part is determined ultimately by the judges alone. The judiciary is then the sanctuary in which the ark of our political covenant is deposited—the instrument by which the powers of government are not merely interpreted and defined, but the one through which they are enforced—made effective for the protection of all citizens, never allowed to be misused for the oppression of anyone among them. While we maitnain this political system, we are not free to elect between an independent judiciary and some other body as a final depositary of governmental power. The functions which have been exercised triumphantly by the courts in this respect, no other agency could discharge effectively. We must entrust the final protection of our government to an independent judiciary or we must abandon that form of government. There is no other alternative. Either the judiciary must be maintained in the position established for it through the evolution of our system, or else we must abolish the system itself. In the last analysis, the alternative before us then is preservation of the courts with the powers they have, or collapse of this Republican government as it has been evolved through operation of our Constitution.

Assuming as I do, that no one desires or could contemplate with patience a proposal to abolish or abandon our government as it exists, it follows that the most pressing necessity of our security is restoration of the courts to the respect and confidence they enjoyed during the last century. How is this to be accomplished? Manifestly, the way by which universal respect amounting to reverence was originally acquired, is the surest if not the only way by which it can be regained.

The distinctive power exercised by the American judiciary —which is also its greatest function—the right to set aside legislative enactments and supervise every exercise of authority that brings any department of government in contact with the citizen, was not expressly conferred upon it by any distinct provision of the Constitution. It was deduced from all the provisions of the Constitution by that master of judicial construction, John Marshall, in the case of Marbury against Madison. That decision of itself, however, could not have sufficed to establish the great and beneficent force which has held this Republic together, making every one of its operations a contribution to the welfare of its citizens and to the growth of civilization throughout the world. It required beyond Marshall's enunciation of the principle, ratification and approval of it by a practically unanimous people. That approval it obtained and has enjoyed down to this day, or at least down to a very recent period.

Criticisms of the judiciary that are at all widespread, assume portentous significance when we consider them as manifestations of this public opinion, upon which the larger powers of the courts depend.

The question whether the judiciary can be maintained in the exercise of those powers peculiar to our form of government, depends upon whether it can re-establish itself in that unanimous public approval, which it enjoyed during the century of its remarkable growth. Before that question can be answered, we must consider how it has come to pass that the courts from the height of universal confidence and respect which they occupied for a century, have sunk into the lower region of discussion and even criticism in which we find them today.

In my judgment, it can all be explained by the law's delay—these delays in judicial procedure which are a reproach to civilization everywhere but which under democratic institutions are subversive of orderly government. Remove these delays and every ground for legitimate criticism of our courts will disappear, and with every ground of criticism removed the voice of criticism will no longer be heard in the land.

If we consider only the declarations of political conventions or the speeches of political leaders, it would seem as though criticisms of the judiciary are confined to the manner in which writs of injunction have been used, and in which proceedings to punish persons accused of disobeying them have been conducted.

This in my judgment would be to mistake mere surface expressions of distrust for its deeper and more serious causes. The real cause of popular distrust, I believe, is the unmistakable fact that while our courts have shown themselves extraordinarily effective, in protecting property from injury by violence, they have broken down utterly as a means of defending property from injury by fraud, where frauds of enormous extent are perpetrated by men of great wealth.

Everyone knows that it has proved impossible for striking laborers to support their demands by the slightest threat of violence, open or veiled, without coming in conflict with an injunction order, and wherever violation of its terms could be proved, punishment swift and severe has inevitably followed.

It is equally notorious that although stupendous crimes have been perpetrated by officers of industrial corporations against property entrusted to them, not one has been prevented, impeded or embarrassed by writ of injunction. Not a single criminal of that class has been prosecuted, much less sent to prison. Hardly one has ever been driven from the trust he has betrayed. The concerns shown to have been looted are still administered by the very same persons who have despoiled them. It is true that where some eleemosynary institution were shown to have been plundered grievously, the ostensible heads of them have been displaced, but the graver offenders, the men whose instruments these officers were, are still in control of these great corporations. The net result of investigation and exposure has been that a few faithless officers who by allowing their misdeeds to be discovered and exposed had shown themselves inefficient agents of corruption, have been replaced by others, who presumably will profit by the lessons of experience and take particular care that no quarrels among themselves shall ever again be suffered to let the

light of publicity expose their operations to public scrutiny and public condemnation.

Now, of course, I do not mean to contend that because the courts have proved inefficient in preventing commission of great crimes against property by officers of corporations, therefore, judicial interference to prevent crimes against property by violence should be condemned. Credit of the judiciary for impartial administration of law is not to be recovered by making it inefficient in two directions, where now it is inefficient in one, but by making it thoroughly efficient in both directions—aye, in all directions. Nevertheless, it must be admitted that failure to enforce law in one direction is accentuated—made more conspicuous and therefore more demoralizing—by singular efficiency in enforcing the law in another direction. I beg you to believe that if I call your attention to these inequalities it is not with any purpose of criticising the courts where they have proved effective but in the hope that we may be able to suggest something likely to stimulate their efficiency in the field where they have proved ineffective.

Wherever the courts have proved ineffective, wherever justice has been thwarted, impeded or defeated, I venture to say it will be found that delays in legal proceedings were the agencies by which her progress was embarrassed and her purpose frustrated. So far as I know there is not in this country any general complaint that the final decisions of legal controversies have been inconsistent with law or justice, but there has been universal complaint of delays by the courts in reaching their conclusions. If we could make judicial procedure prompt as it is pure, we would have justice well night perfect reigning over our country. (Applause).

It may be objected that what is known as the anti-injunction agitation rests on a belief or assumption that the courts have been too prompt rather than too deliberate in their procedure where it concerned the issue of injunction orders, but I think this will be found a shallow and superficial view of the matter. Here, too, the real grievance—the source of the grievance that all fair-

minded men must concede to be real—is delay—delays in settling and determining the rights of parties.

What are these complaints we hear about injunctions? Well, they are two-fold. One concerns the issue of injunction orders ex parte, the other the method of procedure where persons are accused of violating them.

The first can most assuredly be ended completely by ending delays which under existing conditions are features of these proceedings.

The second presents a different and much more perplexing difficulty.

As to the first—It is said that a temporary injunction often imposes on striking laborers conditions so onerous that they cannot maintain peaceful discussions or arguments with men invited to fill their places, without serious risk of being pursued and punished for contempt of court, and that this order, though by its terms described as provisional, interlocutory or temporary, is nevertheless in practical effect a permanent order because through delays before the return is made or delays in disposing of the matter after its submission to the court, the order is continued in force over the period during which a strike can be maintained under ordinary conditions. If this be so, it is a serious abuse, of which the victims have a perfect right to complain. Even though it be contended that delays in these proceedings have never actually resulted in such an injury to any one, the undeniable fact that they are capable of resulting in such abuses constitutes a serious blot on our judicial system.

The remedy usually suggested is to forbid altogether the issue of injunctions except on notice. This in the opinion of many, would so materially, perhaps fatally, impair the effectiveness, and therefore the value of preliminary injunctions. To me it seems absolutely clear that this abuse can be remedied without emasculating seriously or abolishing entirely a feature of our jurisprudence sanctioned by centuries of experience, and which has often proved effective, to arrest the commission of wrongs that if once perpetrated would have been irremediable.

The remedy, I venture to submit, is not in abolishing the ex parte injunction but in making it actually what it is claimed to be—a restraining order so entirely temporary that under no circumstances could its operation injure any one before he can be fully and completely heard. Where an injunction is issued ex parte, the party who persuades a court to grant an order so important without previous notice to the persons who must be seriously affected by it should be required to hold himself ready to justify it at a moment's notice. (Applause.)

The order should be made returnable forthwith; no delay in the hearing should be granted except at the request of the defendants; and the motion once submitted should be decided upon the spot, or within twenty-four hours at the latest. There could be little reason for requiring notice of an application for a preliminary injunction when the period between service of an ex parte order and decision of the motion dismissing or continuing it, would be so brief as to be negligible.

This proposal that a court should be denied power to decide for itself by summary proceedings whether its order has been violated suggests a change in our system of jurisprudence far more radical than many of its supporters, in my judgment realize. Indeed, I think discussion of it would be considerably modified if its full significance were more widely appreciated. Let us see if I can make this clear.

No one, I believe, in this country doubts that power to issue injunctions should be left with the courts. Every one concedes that this equitable function is one of the most valuable which the judiciary discharges. If injunctions are to be issued, it follows, of course, that power to enforce them must be placed somewhere. The only way they can be enforced is by punishing anyone who violates them. While every one concedes that the power to issue injunctions should be left with the courts and that violations of them should be punished, some insist that power to decide what constitutes a violation should be exercised not by a judge of the court but by a jury. This in effect is a proposal to substitute for the summary proceedings by which

courts of equity have established their authority, a system of procedure by which violators of injunctions would be placed on the same footing as other offenders against the law, except that proceedings against persons accused of contempt must be by information, instead of by indictment, and the information instead of being lodged by the attorney general or the local prosecuting officer, must be lodged by a judge of the court whose order has been violated.

In the judgment of many such a proposal if adopted would plunge the administration of law, so far as this branch of it is concerned, into such confusion that it would amount to practical abolition of injunction proceedings. A judge who believes his authority to have been defied, before he could take any action to vindicate it, must obtain the finding of a jury that his belief is well founded. The mere submission of such an issue to a jury would of course be tantamount to an assertion by the judge that his authority or that of his court had been defied. Suppose the conduct which the judge considered a contempt should be declared by the jury not a contempt but a compliment, what would be the effect on this branch of judicial administration? In the opinion of those who are opposed to the proposal it would make the outcome of attempts to punish for violation of injunctions so doubtful that they would seldom, if ever, be undertaken, and if violations of injunctions cannot be punished promptly and effectively, the practice of suing out injunctions would sink into decay and ultimately be abandoned. I think it is fair to assume that such a radical change in procedure amounting to a revolution in our judicial system would be opposed vigorously by many men who sympathize largely with the objection to prolonging through delays the operation of injunctions issued ex parte. However this may be, I don't believe any one will dispute that we should proceed at once to remedy an evil on the existence of which all men are agreed, without waiting to reconcile views on a subject where divergence of views is wide and deep. Every one agrees that delays between the issue of an injunction ex parte and decision of the motion to dissolve it, or continue it, pendente lite, is

an abuse and a serious one. It is an abuse that could be remedied by the simple expedient of making the return immediate, granting no delay except at the request of the defendant, and rendering decision immediately after hearing the parties. This reform effected, we might well wait to see whether additional charges of procedure would be demanded by any substantial portion of the people.

The law's delays always operate unequally. In every country and under every political system there have been weapons which only the rich man can employ because he is alone able to retain the lawyers who know best how to invoke them. While this abuse is universal in this country it is peculiarly oppressive. Here we have the most rapidly growing population in the world, and here a large and ever growing proportion of the population is steadily centering in cities.

Not merely are our cities growing more rapidly, but agencies for transporting men and materials are more extensively employed in them than anywhere else in the world. In these great hives of industry accidents are every day growing more frequent—some of them undoubtedly manifestations of providence; most of them results of greed or carelessness. The wretched victims of negligence are promised by the law such compensation as money can give, but owing to the law's delays, this remains a mere promise that encourages hope rather than a reparation that brings relief. Wherever a street car or other means of transportation operates through an industrial community—wherever a population reaches sufficient numbers to make public franchises valuable and their operation extended, there we find in steadily growing numbers families of persons who have been killed—men, women and children wounded, maimed, rendered helpless by the neglect of men operating some public utility, their right to recover compensation undenied and unquestioned, but actual recovery of damages practically defeated. And how is justice withheld from them? By the very courts organized to do them justice.

Every claim for compensation is disputed—every action to recover damages defended without the slightest regard to the merits but solely for delay—that the miseries delay inflicts upon these unfortunates may force them to compromise their claims on ridiculously inadequate terms. Were I myself consulted by the victim of an accident due to gross negligence, though I felt perfectly confident that a verdict of $5000 would be rendered by a jury to which the cause would be submitted, yet face to face with the delay of three or four years which can be imposed by the tort-feasor—measuring all the chances of error in the various steps through which such litigation must pass—I would advise that unfortunate creature to accept $2500 or even $1000, if such a sum were offered in settlement. When we consider that the theory on which appeals—the chief causes of delay—are allowed, the reason assigned to justify them—is that they operate to make the law more perfect because more equal and then measure the evils wrought by these delays among the poorest, the most wretched and the most unfortunate of the entire population, are we not face to face with a hideous contradiction between the purpose at which the law professes to aim, and the result which it actually accomplishes? When maimed and injured victims of greed and carelessness are forced to bear such hardships and wrongs that some theoretical perfection may be added to the body of the law, it would almost seem as though in this land of liberty, light and progress, we were immolating human sacrifices to the welfare of society.

It may be said that delays in recovering compensation must be suffered by victims of similar conditions in other countries. Even if that be so, as a general proposition, the evil nevertheless assumes a peculiarly aggravated form with us because here the operations of production being more active and more strenuous, the victims of carelessness or greed are vastly more numerous than anywhere else on the globe. And here everyone of these unfortunates who is prevented by the law's delays from obtaining reparation is an additional reproach to our judicial system—and new source of dissatisfaction with the courts.

Passing from the weakest and most helpless elements of the community and the manner in which they are often deprived of justice, let us see how the law's delays are employed by rich and powerful men to defy, obstruct and defeat the government itself.

Some years ago a man, at the head of a great railway company, was examined by the Inter-state Commerce Commission—a body empowered to investigate the operation of such corporations. Some of the questions touched the manner in which he had administered his great trust—whether he had administered it according to the rules of common honesty for the benefit of the stockholders and the public or to despoil it for his own benefit. He refused to answer. The commission applied to the court for an order compelling him to answer. The court granted the application but the question remains unanswered.

These judicial proceedings have been pending some two years. The judgment of the lower court may ultimately be sustained by the highest court, but it will not be until the century has grown so much older that the answer will fall upon the ears of a generation which has forgotten the whole transaction.

In the meantime, that man who has defied the government and the court has obtained control of another railway system. His power to do the very things which he could not deny having done when questioned has become greater than ever. And so the courts, instead of enforcing the law, are actually interposing by delays a shield between this man and obedience to the law. Again it may be said that such delays are incidental to the judicial system of any country. That may be so to some extent. But in one respect—and a very important one—the vice of these delays is peculiar to this country. Here men who control transportation facilities exercise a tremendous power over the lives and property of their fellow citizens, which is entirely unknown in other countries. There is no protection for the ordinary American citizen against unequal and therefore unjust rates, which may affect seriously his prosperity and even entail his ruin, except examination and supervision by the government. Here is a delay which totally defeats the object for which an

examination was begun into the operation of an important public agency. It is something much more than a mere miscarriage of justice in the course of litigation between individuals. It is an injury which strikes at the very heart of government itself.

Without occupying further time in showing how delays which are incidental to judicial procedure everywhere become peculiarly vicious in this country, I ask your attention to a feature of them that is entirely peculiar to us owing to the dual system of government under which we live.

We all agree with Dr. Gladstone that this dual system for several years—aye, for several generations—has proved the most perfect device for regulating the political conditions of a free people ever stricken off from the brain of man. By distributing the various powers of government so that the people of each locality exercise a complete control over matters in which they have the deepest interest and with which, therefore, they are the most competent to deal effectively, while empowering a Federal Government to exercise unquestioned control in matters of more general concern, a state of peaceful civilization was established more perfect, happier, more abundantly blessed than any the world has ever seen. But of late years this system has been perverted from the purpose to which by the first words of its Constitution it is dedicated—the establishing of justice—to the obstruction if not the defeat of justice. When a wrong doer on a stupendous scale, whether it be an artificial or a natural person is pursued either in the courts of the United States or of some state, he seldom if ever denies his guilt, but always pleads to the jurisdiction and thus arrests pursuit at its very threshold and detains it there for an indefinite period. If pursued in the state court he betrays singular sensitiveness about the supremacy of the Federal Government insisting that the United States alone has the right to question him. If pursued before a Federal jurisdiction he at once professes himself alarmed about the growth of Federal authority and insists vehemently that to make him answer for his conduct in a court of the United States is to invade the reserved rights of the states.

It is no exaggeration to say that the facility with which efforts to prosecute perpetrators of serious offenses, or to reform crying abuses, can be impeded by raising these questions of jurisdiction and the long delays which are suffered to elapse before they are adjudicated, has so discredited the Constitution that in the minds of many it has come to be regarded as a labyrinth where the footsteps of justice always go astray, but where the rogue able to employ the legal minds most familiar with all its passages and windings is able not only to find a secure refuge from pursuit for past offenses, but where he can plot fresh schemes of plunder against the helpless community on which he fattens.

Let me illustrate this by pointing out some painful conditions which have arisen from proceedings now actually pending.

Three years ago in the City of New York the gas companies were charging for their product one dollar per thousand feet. The state legislature passed a law compelling them to reduce the price to eighty cents a thousand and proscribing certain penalties against failure to comply with its directions. Instead of obeying the law the companies applied to the United States court for a permanent injunction restraining the state officers from enforcing these penalties and for a temporary or interlocutory injunction *pendente lite*. The interlocutory order was granted on condition that the company deposit in court, subject to final decision of the cause, twenty cents out of every dollar that it collected from consumers. A number of customers under that decision continued to pay a dollar per thousand for the gas they consumed, but many others refused and tendered payment of their bills at the new rate of eighty cents per thousand. These recalcitrant consumers were threatened with discontinuance of their gas service, whereupon they applied to the state courts for injunctions restraining the companies from removing their meters or refusing to supply them with gas at the rate fixed by statute, and these applications were granted. These litigations are still pending.

Here, then, we have consumers of a commodity, entitled to service on absolutely equal terms divided into two classes,

one paying one dollar and one eighty cents for the same product, and this inequality which the law prohibits is established as the direct result of judicial procedure.

It may be said that when the case is finally decided these inequalities will be equalized and remedied. If the law be held valid, those customers who have paid at the rate of one dollar will be reimbursed the twenty cents, while if the law be set aside, those who have paid at the rate of eighty cents will be liable to the companies for the difference between that and the old rate. But there is a third class of consumers who pay the old rate and who have no chance whatever to recover the amount of the overcharge should the new rate be held legal. A large part of the companies' product—I do not know just what percentage, but a very large proportion—is sold to residents of tenement houses where it is used for fuel as well as for light, through what is called the "Nickel-in-the-slot" device. The consumer drops a coin into the meter, whereupon a certain supply of gas becomes available.

No record whatever is kept of these sales, and all of them are made at the rate of a dollar. Should the new law be held valid, there is no way by which these persons who have paid the old and higher rate could recover the excess. Whatever may be held as to the validity of the law, these unfortunates are nailed immovably to the dollar rate.

The legislature being the only body with any right or shadow of right to regulate the price of this commodity, and its power to exercise this function having been suspended for three years, and being still suspended, we have a company exercising a public franchise—that is to say, a great public agency—placed beyond any control whatever. The community, every member of which is entitled by law to service on absolutely equal terms with all others, is divided into three classes of consumers, each obtaining his supply on different conditions through decrees or orders of the courts organized to enforce the law.

Were judicial processes so expeditious that this litigation could have been settled within two or three months, the inequalities among citizens which it has created would still be exceedingly objectionable, yet they might be overlooked on the principle of *de minimis*. But this condition has existed for three years; it may last for three years more. Surely it is not extravagant to say that when courts organized to maintain equality between citizens, become agencies to create inequalities, and these unequal conditions are made to extend over several years, we have a condition little short of anarchy, and anarchy which is the direct fruit of judicial process is anarchy in its deadliest form.

So much for the result of delays interposed between the challenge of a statute and a decision as to its validity. Now let us see how these delays are employed, not merely to protect faithless corporate officers, who have betrayed their trusts, but actually to maintain them in control and practical possession of the enterprises they have looted, discredited, bankrupted.

Doubtless you are all familiar with the fact that the traction companies in New York City were subjects of investigation about a year ago, but few of you, I believe, realize the enormities that were there disclosed. The first result of this investigation was to make it plain that the company operating the most profitable franchise in the world was nevertheless bankrupt—make bankrupt through systematic robbery of the stockholders by directors, who were their trustees. When I think of those trustees—the theory on which the law entrusts them with enormous powers and the manner in which these powers are exercised—I am remainded of Dean Swift's description of the Bishops appointed to Anglican dioceses in Ireland during the early part of the eighteenth century. Their avarice, the disorder of their lives, their neglect of their duties, their contempt of the sacred office which they filled, were sources, as we all know, of bitter complaint and widespread scandal. Swift, however, with the withering scorn of which

he was master, insisted that the denunciations leveled at them were unfair. The men appointed to be Bishops in Ireland, he said, were of the most extensive learning, great piety and singular devotion to duty, but unfortunately on their way from England they were waylaid by highwaymen on Hounslow Heath, who stole their papers, came over to Ireland and administered the dioceses in their places. (Laughter.) I sometimes wonder if these trustees of great interests, these directors elected to administer vast enterprises were not men of unimpeachable honesty and lofty purposes who, while passing Sing Sing, were waylaid by convicts, clothed in the stripes and locked in the cells of their captors, who assumed their clothes, took possession of their places and are now administering their trusts according to the notions and practices that usually lead to the penitentiary. (Laughter.)

Without pursuing any further this interesting though rather profitless peculation, let us return to the tragedy of the traction situation in New York City. When the complete rottenness of the company operating that franchise was made clear, what course do you suppose was pursued by the men who had looted it? Did they betray any fear of the judges? Did they betray any apprehension of judicial process? Did they avoid and shun the courts as dreadful precincts inside which the sword of Justice must smite them? Oh, no! On the contrary, they sought the courts, evidently regarding them as asylums where they would not only be secure from any criminal pursuit, but where they would be afforded facilities to retain control over the companies they had robbed and looted.

A friendly creditor—there can be no doubt about his friendliness — residing in another state, instituted a process in the United States Court, alleging that the concern was wholly insolvent. This creditor and the debtor he was pursuing met by appointment before a United States Circuit judge, and as a result of their tryst two receivers were appointed so manifestly agreeable that the officers of the system appointed by the discredited directors of the company remain to this day in control and actual

possession of its property. Not a single official or important employe was displaced by the receivers. The concern is operated now by identically the same men that operated it before the rascalities were uncovered which forced the management to take asylum in the United States Court. It is true that after an interval the president of the bankrupt company, when subpœnas became thicker in the air or at least more dangerous than microbes, resigned on account of his health. I think he went fully ten miles for the sake of securing a change of air and at the same time incidentally placing the boundary line of a state between himself and any inquisitive process servers who might prove anxious to ascertain his whereabouts. (Laughter.)

This, I repeat, is not an exaggerated picture painted by fancy; it is a statement of fact, attested by the records of our courts. The collapse of the traction company has been productive of widespread disaster. Many investors have suffered heavy losses, some individuals have been ruined, many families have been impoverished; the public convenience has been seriously affected. But its worst fruit has been a deadening of the public conscience, which has been made so familiar by this appalling vice that it has ceased to be shocked by it. Crime of this character is no longer considered a matter of indignation or even of surprise. Its prevalence is assumed as a necessary feature of finance and its extent calculated as one element in determining the value of securities. It has become matter of jest rather than of reprobation. Its perpetrators and beneficiaries are objects of envy rather than of reprehension.

Do you think that I am exaggerating? Well, let me state one fact which illustrates strikingly the general indifference to crime bred in the public mind by the immunity which these great criminals have enjoyed.

After the appointment of receivers for the company operating the traction system, default was made in paying rent for the Third Avenue line, the largest of the subsidiary or leased companies, and it was thereupon placed in the hands of a separate receiver. That gentleman has just submitted a report of its con-

dition to the bondholders, one feature of which is a statement that some $30,000,000 raised by the sale of its bonds have absolutely disappeared. Think of it! Of $30,000,000 raised upon the bonds of this company not one dollar has ever been expended for its benefit. The proceeds have disappeared absolutely and completely. And how was this announcement treated? With complete, or, rather, amused indifference. What steps were taken to pursue the men responsible for this stupendous fraud? Not one. The whole matter was treated as a jest, not a crime; a subject of merriment, not of indignation; an occasion for pleasant witticisms, not for serious indictments. The receiver dismisses with laughter the suggestion that it would profit any one to engage in inquiries as to what became of this enormous fund. And not a single judge has charged a grand jury to investigate it. No prosecuting officer has set the law against it. It remains a humorous recollection of financial operations, a source of quips and jokes by the receiver appointed to guard the property of a corporation and therefore to pursue relentlessly any one who had defrauded it.

But you may ask how do the law's delays operate to produce these shocking conditions. I will tell you.

We have a statute in New York State which provides that where a concern has been bankrupt for a year it is the duty of the Attorney General to bring proceedings for its dissolution. The proceedings begun by friendly creditors in the United States Court were not to wind up this traction company, but to marshal its assets, an euphoneous way of saying to continue it in operation under control of the men who had plundered it. Well, the Attorney General brought his action in the state courts, basing his complaint upon statements embodied in the petition filed by the friendly creditors in the United States Court, all of which had been admitted, and he asked that receivers be appointed at once to take possession of the company's property. The state court granted the application, and three receivers were appointed, who at once applied to the United States Court for an order directing the receivers previously appointed by it to turn over the property

of the company to the receivers appointed by the state court for the purpose of winding it up under the law. That application the United States judge said raised a very interesting question, but its presentation he held to be premature because final judgment had not yet been rendered by the state court that the company was insolvent. Accordingly he dismissed the proceedings for the present, intimating that the application might be renewed should the state court give judgment in favor of the Attorney General. Thereupon, these gentlemen who had set the United States Court in motion on the ground that the concern was insolvent, went over to the state courts and denied that it was insolvent. On the issue thus raised a long litigation has been in progress. The case was tried last March, I think. It is not decided yet.

When at length it shall have been decided by the judge of the State Supreme Court, to whom it has been submitted, it will go to the Appellate Division of the same court, and from there to the Court of Appeals. This will consume at least three or four years, to say nothing about further delay should it be sent back by either or both of these tribunals to supply some technical omission or to expunge some technical redundancy. Certain it is that before a final conclusion can be reached many years must elapse. Meanwhile, the company, which cannot be dissolved owing to these delays, will undoubtedly be reorganized. We lawyers know precisely what that means. The creditors who have already been despoiled will be offered the alternative of submitting to further spoliation or having their claims cut off altogether by foreclosure. There can be little doubt that they will accept what they are offered rather than risk a total loss. You or I, if consulted, would feel bound to advise such a course. The unfortunates who without fault of their own have been wounded and maimed and injured and the families of those victims who have been killed will find themselves with no reparation other than worthless judgments against an insolvent concern. But this is not all. The concern itself was established through a combination of various independent companies, which were allowed

to amalgamate and in many instances to extend their lines on condition that transfers would be issued enabling every passenger to travel from one end of the city to the other and across it for a single fare. Since the receivers were appointed, at various points where the transfer system has not proved profitable default has been made in the rent agreed to be paid for different lines, with the result that these leases have been declared abrogated, and transfers are no longer issued. Thus we see the only persons who have not suffered from these appalling crimes are the perpetrators of them. Bondholders are despoiled. Holders of lawful claims arising from the infliction of personal injuries are cut off from any chance of compensation. The public must suffer by submitting to inferior service, while paying higher rates for it. But the men who have wrought these results will make every injury suffered by their victims a source of profit. The enterprise, relieved of agreements that have proved unprofitable and of liabilities that were onerous, will, through the process of reorganization, be restored to the men who have held control of it through the receivership.

Surely these conditions, and they are conditions actually prevailing in the largest city of this country, are hardly consistent with any modern conception of civilized government. What is the cause of them? Delay! Delay! Always delay! Delay which the rich man alone is able to secure and by which he can obstruct, defraud and exhaust the poor man whom he has wronged, through which he can defy the government he has degraded, discredited, perverted, prostituted.

These delays, which have grown until they cast such deep discredit upon the judiciary, are not fruits of deliberate depravity. They are due largely to misconception of their significance—I may say of their enormity. For centuries delays in legal procedure have been accepted as incidents of litigation rather than condemned as positive abuses. Judges grant them as matter of good nature. Lawyers agree to them as matter of courtesy among each other. Few, I fear, realize that they are discrediting deeply the whole judicial establishment. To dispel this apathy

is the first step towards effective reform. These delays will be ended when bench, bar and community realize that to delay justice is but one shade less corrupt, criminal and debased than to sell justice. I do not think I am exaggerating in the slightest degree when I say that if these delays be not ended, demoralization of the body politic, especially in matters financial, will not be confined to the Atlantic seaboard nor to a few great cities. It will extend its corroding, blighting course into every community where business interests are extensive and where attempts to violate law are employed.

Am I then to stop here, and after describing conditions which are much worse probably than you have realized, fail to suggest a remedy for them? That would be to preach a lesson of despair, while I am here in the hope that I can offer a suggestion of improvement. For this abuse there is, it seems to me, a remedy ample and complete—a remedy so simple that its very simplicity probably explains why it has not been long since applied. At the last session of Congress I introduced a bill providing that the chief justice and the senior associate justice of the Supreme Court of the United States—one a Democrat, the other a Republican—and two Circuit Court judges—Gray, of Delaware, and Morrow, of California, each of different political affiliations—together with five other members, to be appointed by the President of the United States, be constituted a commission to consider and report whether it be possible, by modification in the law, reorganization of the courts or otherwise, to establish a system of procedure under which every action, proceeding or controversy begun in a court of the United States could be terminated within three months from the service of the initial process. It must be clear that decision of a cause, however strictly in accordance with law and right, if it be rendered only after a period of three or four years, is not justice but a denial of justice.

Unless our political system can be made to effect settlement of controversies in some such limit of time as that fixed in this measure submitted by me to Congress, it cannot be said to main-

tain justice, and a system which fails to maintain justice full and complete is doomed to destruction.

Is such a reform as I have outlined practicable? Is it feasible to reduce delays so that every case begun in a court of this country can be prosecuted to final adjudication within three months? Since coming here I have inquired into the condition of litigations in your State of Ohio, and I find that they are very much the same as in my own state. In large communities it is impossible to get a cause finally adjudicated in less than two or three years. It cannot be reached for trial inside of a year at the earliest. What substantial, immovable reason is there why every cause could not be tried within thirty days from its commencement? It may be said that there are not enough judges to render such expeditious service. Then why not revert to the old practice of the English kings when the jails were crowded? A special commission of Oyer and Terminer and General Gaol Delivery was appointed, and it sat till every prisoner was tried and the gaol delivered of its inmates.

When courts are congested in this country, why could not special commissioners be appointed to hold jury trials, so that in every county the calendar would be cleared at the end of each month?

Masters are appointed now in the United States Court to take testimony and frequently to report their conclusions. We appoint referees in the State of New York to try cases involving especially difficult questions of law and fact. How, then, could there be any objection to appointing sufficient commissioners to try simple issues of facts with the aid of a jury? Is there anything extravagant or startling or unreasonable in such a proposal? The power to appoint these commissioners might be vested in the Supreme Court, the Circuit Court or the Common Pleas judge. If all your trial calendars were cleared every month, what do you think would be the effect on litigation? When it became clear that every cause would be tried so promptly, answers purely for delay would seldom be interposed, and the volume of litigation would be decreased at least 25 per cent.

An appeal should be taken within ten days from the decision. If a party cannot decide within ten or even five days whether he is sufficiently injured by a decision to justify him in appealing from it, he is not justified in appealing at all. Is there any reason why every cause should not be heard by the Appellate Court within ten days after the appeal is perfected, and decided within ten days after its submission? If a second appeal be allowed, there is no reason why it should not be taken, argued and decided within the same period.

Every one, I think, will agree that such a reform, if feasible, would be in the highest degree desirable. But doubts are expressed of its feasibility. Why is it not feasible? The only reason I can conceive is that under such a system judges would not be allowed sufficient time to write out opinions explaining their decisions. But it is not essential that the opinion of the judges should accompany their decisions. The decision, of course, is one thing; the opinion of the court is another. The decision affects the parties and the parties alone; the opinion concerns the whole body of the public. It has always seemed to me palpably unjust that litigants should be compelled to await decision of matters in which their interest is vital until completion of a contribution to general jurisprudence, in which their interest is but that of the community. I do not undervalue judicial opinions. I acknowledge their importance and weight in the development of jurisprudence. But there is neither sense nor justice in unnecessarily making them a burden on litigation. Let the opinions be published when the judges think proper, but let the decision, which is a right of the litigant, wait upon nothing except justice and the necessities of justice. (Applause.)

I cannot believe the reform I have suggested is impracticable. I do not believe it is even difficult, except so far as it may come in conflict with hoary customs and rooted prejudices.

In judicial procedure, as in all other departments of activity, the growth of invention and the efficiency of modern labor saving devices should be utilized. The time allowed for preparation and interchange of pleadings remains now as in the days when every

paper was written out carefully and laboriously. The same length of notice is still required as in the days when lawyers traveled by stage coach to the circuit town and when a mail service depending on horses was the only means of communication by writing. Today, when the typewriter and the stenographer, the telephone and telegraph, the railway and the automobile, are saving time and labor everywhere, in legal procedure alone no economy has been effected. All this should be changed. Instead of lagging behind other avocations, our profession should take the lead in making the inventions of men agencies for saving time in settling their disputes. It will, of course, require legislation to modify rules of procedure so that a few laggards in the profession will not be allowed or empowered to obstruct the course of justice and impair its credit. With the law modified in this respect, it needs but earnest coöperation of bench and bar to make the reform complete, effective and durable. Every judge must realize that an old issue upon his calendar is a discredit to his court and a disgrace to himself. No misconceived notions of courtesy among lawyers should be allowed to delay the prompt administration of the law. No agreement among counsel should be suffered to prolong litigation. Even if the parties to an action and all the counsel should combine to postpone its trial, the case should be stricken from the calendar unless under exceptional circumstances. Where every case could be tried within thirty days, striking it from the calendar would involve no serious delay and therefore would entail no hardships.

My friends, if this reform be accomplished, if the courts become thoroughly efficient agents of justice according to this standard of efficiency, all the meritorious work they have done, all the splendid contributions they have made to the progress of civilization since the organization of this government, are but faint indications of the more decisive service they will render in the wider field to which modern condition invites them.

How was it that Louis IX succeeded in establishing the overshadowing authority of the French kingship in making the fierce barons, who had so often defied his predecessors, acknowledge

not his primacy, but his supremacy? He was not as successful in war as others who had failed in the task which he accomplished. He did not acquire extensive territories. He had wasted vast treasures and many lives in two crusades, and yet he came back to the country which he had impoverished by unsuccessful adventures and established his kingship so firmly that for five hundred years it remained the power which overshadowed all others in the country. How can this success in the teeth of so many disasters be explained? Voltaire would have us believe that, having led the French nobles to waste their fortunes in unsuccessful military ventures beyond the seas, Louis took advantage of their poverty to extend enormously the power of the crown. But, while Voltaire is generally accurate in his statements of fact, it would be very unsafe to adopt the conclusions he draws from them. It was not by doing injury to the nobles, but by doing justice to all men, that St. Louis established his authority. Listen to this extract from his chonicler, Joinville:

"Many a time it happened in summer that the king went and sat down in the wood of Vincennes after mass, and leaned against an oak and made us sit down around about him, and all those who had business came to speak to him without restraint of usher or other hope, and then he demanded of them with his own mouth, 'Is there any one who hath a suit?' And they who had their suit rose up, and then he said, 'Keep silence all of ye and ye shall have dispatch, one after the other.' And he called my Lord Peter DeFontaines and my Lord Geffrey Devillette" (*two learned lawyers of the day and counsellors of St. Louis, as Guizot explains*), "and said to one of them, 'Dispatch me this suit' and when he saw aught to amend in the words of any who were speaking for another, he himself amended it with his own mouth" (a very early instance of amendments to pleadings in the course of trial). "I sometimes saw in summer that to dispatch his peoples' business, he went into the Paris garden, clad in camelet coat and linsey surcoat, without sleeves, and a mantle of black taffeta around his neck, hair right well combed and without coif, and on his head a hat with white peacock plumes, and he had carpets laid for us to sit around about him. And all the people who had business before him set themselves, standing around him, and

then he had their business dispatched in the manner I told you of before, as to the garden of Vincennes."

There lies the explanation of St. Louis's influence on his own age and on the generations that followed him. It was by zeal and efficiency in dispatching the controversies of men—mark that expression, in dispatching their controversies—that he established the French monarchy, which for five hundred years survived the discredit brought upon it by the vices of his successors.

Dispatching the business of litigants—that is the object which American judges must pursue diligently, which lawyers must loyally aid them to accomplish, if the American judiciary is to fulfill the high mission which Providence appears to have imposed on it. Never in the history of man was the field of judicial labor so wide. Never was judicial service of the highest character so essential to the well being—aye, the existence—of society. The importance of the judiciary in the nature of things must grow as the matters requiring action by government become more complex and more difficult. The questions now arising in the pathway of the republic and of civilization cannot be settled by legislative enactment or executive action. They can be solved only by judicial decree. The reorganization of our industrial system at the close of the Civil War on a basis of free labor opened up before this country an opportunity for improvement of unprecedented extent, which has been improved with unparalleled vigor and success. Scattered railway lines, offering inefficient service while competing ruinously with each other, have been combined into great systems, rendering vastly improved service at greatly reduced rates. The productive power of human hands has been greatly stimulated by the march of invention. Darkness has been dispelled and every hour of the day made available for human labor. Through mountains and under rivers, which had formerly been barriers to human intercourse, tunnels now facilitate the passage of man and the product of his labor. Prosperity without parallel and wealth beyond the power of former generations to conceive have become ours. This enormous improvement of human conditions has created difficulties graver than have ever

before confronted human society. The problem now before us is not to enforce justice upon violent men who are impatient of it, but to ascertain where justice lies in perplexing controversies and make it clear to men who are eager to obey its requirements. Franchises granted for the public welfare are found in many instances to have been abused for the oppression of some and the enrichment of others. What duty to the public does justice impose upon the men operating these great public utilities, what return for rendering it should be yielded to the stockholders?

The enormous growth of wealth has led to fierce quarrels between the elements by whose coöperation it is produced. In the course of these struggles industry is frequently suspended and the public peace sometimes endangered. Where is the line inside of which expostulation by the laborer with his fellows is lawful and therefore to be protected, beyond which it becomes a threat or intimidation which justice condemns and the courts must prevent? All these are grave questions that cannot be settled by legislation. It is impossible to anticipate by any legal provision the varying aspects which they at different times might assume. Each question or difficulty must be decided as it arises by judicial decree. As each case is decided after full argument and patient examination by minds trained to such difficult labors, a body of law will be finally evolved so complete and so perfect, that law and justice will be so plainly identical. In these days justice need only be made conspicuous and it will be universally respected. The perils now threatening society will be averted; at least the most serious of them will be dispelled. The cloud overhanging industry will be lifted as men obedient to Justice realize that it is wiser to employ their energies profitably in production than to use them wastefully in contention. Peace being made perfect, prosperity will become abundant beyond our power now to measure. To achieve these glorious results nothing is essential except a judicial system thoroughly efficient. To make the efficiency of our judiciary complete, it is only necessary to modify existing procedure and customs so that controversies will be decided as speedily in the future as they have been decided

impartially in the past. To make the future of our republic absolutely secure, its influence boundless, its duration endless, its beneficence measureless, it is only necessary that our judges become efficient agents of prompt justice and thus make our courts the impregnable citadels of perfect justice.

Gentlemen, I thank you for that close attention, which I must plead as the excuse—as, indeed, it is the explanation—of the great, I fear the unwarrantable length at which I have spoken. (Loud and long continued applause.)

THE CRIMINAL LAW

BY HON. CHARLES H. GROSVENOR, OF ATHENS

The title assigned me is broad enough to cover every topic of the establishment, growth and development of the criminal law, the various enactments and their enforcement; nor does this title limit us in the investigation to the State of Ohio, but for substantially all of the purposes in view at this time, it will be a discussion practically of Ohio legislation and Ohio procedure.

The criminal statutes of the federal government have been a growth. At the date of the origin of the federal constitution little thought was given by the wise men who enacted it, to the administration of criminal law, or to the necessity for any comprehensive code thereof. So we find the following is the only reference of fundamental importance touching the creation, or enactment, of criminal law:

> "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed."

There was some provision made in regard to treason and the trial of an offender, but little or no suggestion of terms, definitions, rules of trial, or anything else in fact, that related to criminal law or criminal procedure. Fundamental ideas only were suggested, but on looking around to see what had been accomplished by the adoption of the Constitution and to test the great questions of what had been omitted from the Constitution, it was discovered that there was real necessity for something more definite in regard to the whole subject matter.

I am aided very greatly in the preparation of this imperfect discussion by an address made by Hon. David K. Watson,

formerly Attorney General of Ohio, and one of the commissioners who so faithfully discharged his duty in the matter of the revision of the federal statutes for some portions of the work done by him, in an excellent address delivered by him before the Law School of Columbian University in 1901. He states:

> "The great safe-guards relating to personal liberty and rights; that no person should be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury; that no person should be subject for the same offense to be twice put in jeopardy of life or limb; that no person should be compelled in any criminal case to be a witness against himself; that no person should be deprived of life, liberty or property, without due process of law; that in all criminal prosecutions the accused should have a speedy and public trial, by an impartial jury; that he should be informed of the nature and cause of the accusations; that he should be confronted with the witnesses against him; that he should have compulsory process in his favor; that he should have assistance of counsel for his defense; that excessive bail should not be required; that excessive fines should not be imposed; that cruel and unusual punishments should not be inflicted. These were omitted from the original Constitution, and are embraced in the fifth, sixth and eighth amendments thereto. Various reasons why these provisions were omitted from the Constitution have been assigned by eminent statesmen and jurists, some of whom were members of the Constitutional Convention, but whatever may have been the cause, it is certain that we find them in the amendments, and not in the original instrument.
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These wise provisions that thus entered into the fundamental law of the United States and which from time to time entered into and became a part of the fundamental law of most of the states of the Nation, were found to be necessary in the early days of the operation of the Federal Constitution, and it is a striking and significant fact that from the date of the adoption of the 12th Amendment to the Constitution, which was pro-

claimed as a part of the organic law of the country, on the twenty-fifth day of September, 1904, no change has been made in the Constitution, excepting the three amendments which grew out of the conditions during and following the Civil War, and which may be said to have become necessary and were adopted by the stress of war and revolution. It is a striking commentary upon the perfection of the work of the framers of the Constitution and will forever redound to their honor and glory. All the criminal acts which have been enacted by the Federal Legislature from 1804 to the present time, have been in furtherance of, and under the provisions of, this Federal Constitution.

It was early held that we had no such thing in this country as common law crimes. The peculiar form of the English government, from which we derived in part and tentatively our systems, suggested to our forefathers that it would be wiser to establish a government, built upon fundamental written propositions, than to hazard the action and result that might grow out of a system of creating law by any written action or by common consent. And it was wise in our forefathers to reach that conclusion. No wiser utterance was ever made by George Washington, or anybody else, speaking as the head of the Nation, than was the caution that Washington gave in his "Farewell Address" in the following words:

> "Toward the preservation of your government and the permanency of your present happy state, it is requisite, not only that you speedily discountenance irregular opposition to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown."

In the same famous message General Washington added:

> "This government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and matured deliberation, completely free in its principles, in

> the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support." * * * "But the Constitution, which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all."

Here was, in mild but unmistakable language, a warning against that insidious foe of written constitutions, the suggestion of alteration of the Constitution, or the setting aside of the Constitution by illegitimate construction, or unwarranted usurpation.

In these days, when many office holders seem inclined to constitute themselves a constitutional convention and the Supreme Court, this warning of Washington's is peculiarly pertinent.

The independence of the states, which was guaranteed by the Constitution, turned over to the states the power to legislate in relation to all crimes and offenses that were especially pertinent to, and affective of, the local government of the several states. And so it has come about that the criminal laws of the state not only relate directly but exclusively to the suppression and punishment of crime within the state, unless the crime in some way directly affects the peace, good order and supremacy in the proper channels of the Federal government. Crimes against the Constitution and the Nation, crimes against the revenues, acts in violation of the postal laws, frauds upon the public treasury in any and in all directions, frauds in the matter of public lands, crimes against the regulations of the army and navy, and in brief and in condensed form, all crimes and irregularities growing out of national supremacy and in national matters, are to be handled by, ferreted out and punished by the Federal government, as all other crimes and offenses, relating exclusively to the peace and good order of the states, are cognizable only by state enactment and are prosecuted and punished only by state authority. And it follows, of course, that anything that the state does in that behalf, its purposes must be explicitly stated in the statute, leaving nothing to construction, so far as the creation of an offense, or so far as the creation of a remedy,

is concerned, must be left to any authority under any circumstances other than the written law of the commonwealth.

It follows, therefore, necessarily that the Federal government should be supreme in its authority to prescribe and create criminal statutes and ordain procedure in criminal cases. And herein arises some of the difficult problems of today. The legislation of Congress that creates penal statutes for violation of certain Federal enactments relating to pure food and railroad transportation and many other subjects upon which the Legislature of Ohio has also enacted legislation and penal statutes, necessarily brings into collision state and federal legislation, and this is one of the confused conditions which has arisen out of the dual character of our government and the dual relation of the Federal Constitution to the United States and to the states of the Union.

But it is the duty of Ohio, through its Legislature, to take care of the legislation relating to crimes and misdemeanors in Ohio and it is unimportant what the legislation of Congress is, so far as relates to other matters not pertaining to subjects about which the state has exclusive jurisdiction. The complications here referred to grow more and more annoying and more and more complex, and from time to time more and more vexatious, but with these questions here and now we have nothing to do. Be it ours to commend to the Legislature of Ohio such procedure in legislation as will bring about the following results:

(1) The faithful enforcement of all existing criminal laws

(2) The enactment of such laws as experience shall from time to time indicate as necessary for the preservation of peace and good order and will lead to the wise promotion of righteous state government.

To this end it is necessary, first, that every form of wrongdoing shall be met by speedy vindication of law. Every person charged with a crime should have guaranteed to him, through the legislation of the state, a speedy trial. This term "speedy trial" is quite frequently distorted into the basis of injustice and unfair criticism of the courts and the officers charged with

the execution of the criminal statutes. A "speedy trial" is always awarded to the victim by the court of Judge Lynch. Speedy trial in this connection means a trial at as early a day following the committing of the alleged offense, as is consistent with a fair trial, a just trial, a trial that will inure to the vindication of justice to the public and fairness to the accused. The time when the trial shall take place must necessarily be left to the wise discretion of the judge.

The constitutional provision for an impartial and fair jury can never be modified while the purpose of legislation is justice and fairness.

How is an impartial jury to be obtained in Ohio? One of the leading defects in our criminal procedure is the provision relating to the procurement of a jury in cases where, under our present statute, it is found to be proper to produce a jury from outside the county in which the crime was committed and in which the indictment was found. The motion to remove the venue nearly always, if sustained, results in a long delay in the trial, for the obvious reasons that the court from which the removal takes place is compelled to send the case to one of a very few counties, and often the court of the county to which the case is sent is found to be either in vacation or with a docket set for trial and into the midst of which it is inconvenient, if not impossible, to inject the case thus removed. And there are many other reasons why this system of our present statute is entirely unsatisfactory in its operation. In many of the states of the Union, in cases where a proper condition for removal has been made to the court, it is authorized to order a jury to be selected from some other county, usually with the restriction that we have in our own code as to the counties that may be called upon by the process of removal, to which reference is here made. The order of the court is for the drawing of a jury in a county to which, under our present statute, the case might be transferred, and the bringing of that jury to the county, instead of removing the case to the other jurisdiction.

In the states where this law has been for many years operative, entire satisfaction has been given by it, and in some of the most important cases of crime recently tried in Virginia and other states, the statute has worked well. It is a saving of expense, it promotes speedy justice and is in all respects a very great improvement upon the present statute of removal.

The law which authorized a single affidavit of a single individual, without any reference to his interest, or his character, to procure the removal of a judge and the bringing into operation the statute to procure another, ought to be amended and amended in such a way as to destroy the possibility of the creation of a condition of things which now exist in some of the districts of the state. The qualification of a judge to sit on the trial of a case, criminal or civil, is a matter of the very greatest importance. It is unfair, grossly so, that a judge prejudiced against the defendant in a criminal case, or against his attorneys, should sit to try his case. It is a thing against which our sense of justice revolts. No man who has decided that another man is guilty of a crime, no matter in what capacity he has acted, no matter whether he has tried the question by evidence, or whether he has guessed at it on the basis of rumor, should be permitted at any stage of the hearing of that man's claim to vindication, to hear the case as referee or judge. The very suggestion is revolting; the very thought of it is repugnant to our notion of fairness and justice. But it is equally unfair and unjust and equally as subversive of the first principles of administration, that a single individual shall, whether acting in good faith or corruptly, be permitted to bring about a change of this character without any appeal, without any hearing upon the other side, by his own mere statement of the fact. No judge fit to be a judge, competent to be a judge, will sit in a case in which he holds prejudice against either party, or counsel, and it is very seldom that you find a judge clinging to the bench under these circumstances.

The law ought to be so changed that at least the facts upon which the allegation of disqualification is made shall be set out

in the affidavit, and there should be still other and further safeguards against the abuse that so constantly arises.

The office of prosecuting attorney is an office of the highest importance. To the prosecutor is handed over the interests of the state and the interests of the defendants in criminal procedure and the interests of the great body of the public, not only because of his unrestricted power to make costs and expenses, but because of the importance of his official relation to the Board of County Commissioners, the School Boards and all the other matters of interest in which he is called upon to act. The office has not been, as a rule, in Ohio used for unfair purposes, but it must be readily assented to by every fair-minded man, that there is given to the prosecuting attorney power and jurisdiction that may be used unfairly. But to begin with, he ought to be a first-class lawyer; he ought at least to be as good a lawyer in the preparation and trial of cases, as any other lawyer at the bar of his county. I don't mean that he should be a man of such a length of service as the oldest and the most experienced of the county lawyers, but he ought to be capable of transacting the business of his office himself. It is an unfortunate condition in Ohio that creates a long roll of patronage to be either dictated by the prosecuting attorney or administered by the judge, or handled by both. It is a most unfortunate situation that hands over to the common pleas judge the patronage of appointment as assistant to the prosecuting attorney, in practically all of the greater criminal cases in very many of the counties of Ohio, another attorney as an assisant, to be paid out of the county treasury. The office of judge was never intended to be a purveyorship of patronage in any form. The pay of the prosecuting attorney should be ample to justify him in devoting at least quite sufficient time to the preparation for trial, and the trying of all the criminal business in the county, and if the people of the county will only see to it that no man shall be elected prosecuting attorney who is not a competent lawyer, the expense of criminal prosecution and criminal ad-

ministration will be reduced by a very large percentage in the state of Ohio.

And there is another thing. The process of the court should never be prostituted to the interest and promotion of civil litigation. It is a fraud upon the public of the most glaring character when a prosecuting attorney is permitted to drag into the grand jury room a long line of citizens, and through the stenographer furnished by the county, he takes down the testimony of the witnesses, has that testimony transcribed and then failing of an indictment, or reaching the point where the indictment is in some way disposed of, that testimony is used as the basis, as the foundation and the inspiration of the civil actions, which, in point of fact, was the real aim and object of the investigation. Let the state make its investigations as to criminal offenses for its own purposes of prosecution, but let it be denied to the prosecuting attorney that he shall appear in a civil action, based upon the developments in the grand jury room, and especially prohibit the use of the testimony thus taken in the furtherance of the civil practice of the prosecuting attorney, or anybody else.

Let the two lines of litigation stand upon their own merits and independent of each other, and a vast bill of costs will in this way be lifted from the shoulders of the tax payers.

The farther from the purposes of money making and personal advantage to the office holder the office of prosecuting attorney can be removed, the wiser and juster will be the administration and the more conducive to the greatest good to the greatest number.

But after all, the courts of the country are the greatest factor in bringing about and carrying forward, under all circumstances, a wise administration of the criminal law. No reform can be effective that does not include the courts and no progress will be made toward righting any existing wrong, unless the remedy be approved of and carried into effect by the courts of the country. It is claimed by many that one of the greatest drawbacks to the satisfactory administration of justice is what many gentlemen are pleased to denominate "the law's

delay." There is nothing more flippant than a maxim. Ignorance handles a maxim with profound admiration, but quite often without fully realizing its meaning. If the term is intended to carry with it the condemnation of all the delays incident to an important case in a court, then a maxim is silly. The most obvious suggestion of a purpose to have justice and fair dealing and satisfactory results, often and generally involves delay. It need not here be stated that after the plaintiff has prepared his case and is ready for trial, perhaps, there must be a delay or the defendant will be taken by surprise and be found unprepared for the exegencies of his condition. It is just as important that there shall be time enough given for intelligent preparation for trial, as it is that justice shall not be unreasonably delayed. The creation of innumerable courts and the addition of judges in Ohio has not operated to promote satisfactory results. Indeed, in many sections in Ohio, in the rural districts especially, the increase of judges has operated as a delay to business. That statement is a curious one, but it will be vindicated in many sections of Ohio if a frank response should be made to an interrogatory. With plenty of time and very little to do, continuances and delays are much easier to obtain than when the business occupies substantially the whole time of the judge and the business of the court proceeds regularly upon the sittings of the docket. The courts of the state, as a whole, are costing too much money. There are common pleas districts in Ohio where there are twice as many judges as find constant occupation, or anything like constant occupation, throughout the year. It is not an unreasonable claim that the public might make upon the common pleas judges to sit in actual discharge of their official duties in the court houses thirty-two weeks out of the fifty-two in a year.

Twenty weeks is vacation enough for an able-bodied man, and if a judge is not an able-bodied man, he has not fitness for the place he occupies. Speedy justice means, when rightly interpreted, that there is in the courts an opportunity for every man having a claim, or denying a claim, to be heard as soon as,

with reasonable diligence, the case can be prepared for trial, and whatever delay is given by the judge in the furtherance of a fair trial, a fair preparation, a fair determination, is delay wisely made and will inure to the benefit of the public and enlarge the confidence that the people have in the fairness and the justice of the courts.

Decisions of questions of importance which reach the supreme court of a state should always be decided and the decision of the court should always be made known. There is nothing that so completely degrades a court in the estimation of the bar and the intelligence of the country, than a court that fails to make known to a fair litigant the ground upon which his case is decided adversely to him. It is equally wise, equally proper, equally necessary, equally indispensable, that the winning side shall know the ground upon which it won; for incidentally, upon the decision of an important question in a court of last resort, there enters into the field of interest the great body politic of the people of the state; not alone the plaintiff and the defendant in an action pending and the determination of which has finally been left to the supreme court of the state; not alone the parties to that record are interested, but the bar of the state, the bench of the state and the people of the state; and they have a right, each of them individually, and all of them collectively, to know what the law of their state is as propounded and decided by the supreme court. And it ought to be put in plain language, stripped of verbiage and circumlocution, and aim to give the particular ground upon which the decision rests, with such explanatory statements as the court sees fit to make. I want to press this point. The supreme court of a state sits as the tribunal prepared by the state. Its great expenditure of money, paid out of the pockets of the people of the state, and one of the objects of its creation and its maintenance, is that the people of the state may understand what the law of their state is.

When you carefully read the decisions of the Supreme Court of the United States and occasionally take up the reports of a great number of the states and you find that certain

of the courts of certain of the states are seldom ever referred to, you have a right to suspect that there is some reason for the absence of such references. It will be found, no doubt, to be occasioned very largely by the disposition of the courts of some of the states to reach conclusions—to give no reasons. Take an instance, now, like this, where a number of questions, so far as the particular state is concerned, are raised in the trial of a criminal case. Questions that have perhaps been heretofore decided in some, possibly many, of the states of the Union, not always uniform in results, and those authorities are brought forward in support of the propositions involved in a case at bar. Courts of the highest respectability have been heard to decide one way or the other, and these authorities have been brought into the particular court in which, for the first time in that state, the identical question is raised. And then suppose that that particular supreme court says, we affirm the judgment of the court below, we reverse the judgment of the court below, as the case may be. Is that a satisfactory result? Is that an honest discharge of the duty owed by that court to its constituents? Is that satisfactory to the bar and bench of the state? Upon what ground was that case affirmed, or reversed? What principle was involved in it and what was the basis of the decision? It is very easy for the supreme court of a state to read the record and discover that the defendant in a criminal case ought to have been convicted, because the evidence shows him to be guilty, and then refuse to decide the numberless questions that have been brought with great care and which have been argued with elaborate research. There is nothing more pernicious than a practice in our courts of last resort, in some states, of this particular matter.

What would be thought where, in the discharge of its duty, the Supreme Court of the United States had decided the absolute necessity of certain averments to be necessary in an indictment and where that same court had pointed out how the Constitution of the United States had been violated, or ignored, in a case identical, or practically identical in principle; and yet a

court of last resort, under a state statute, which in no wise varies the terms of the Constitution of the United States upon that question, and it would be illegal if it did, simply announced, "judgment affirmed," or "judgment reversed."

And these decisions are usually reached in the following way: The entire record of the case is produced and the evidence shows that the man was guilty, and the supreme court says: "Here were a half-dozen outrageous decisions; they never ought to have been made; they are absolutely wrong, and here they are brought up for review before us; but read this evidence, my colleagues, and you will discover that this scoundrel ought to have been convicted. Now, it is a great deal easier for us to simply affirm this judgment and let this fellow go to the penitentiary, than it is for us to give our reasons why we do not reverse this case upon the ground of the apparent errors in this record. He can not help himself. He has no further remedy. He can not go to the Supreme Court of the United States probably, and if he could, he has not money enough to go there with, and it will be just as well to say 'judgment affirmed' and let him go. It will save us and it will end all labors. What matters it that these lawyers have been active and vigorous and painstaking in their study of this case and the presentation of these authorities? What matters it that we discovered here that errors innumerable crept in? What difference does that make? This man ought to go. The weather is warm and we want a longer vacation. We can not sit here and tell the people upon what grounds we based our decision; let's settle it, and actual justice to this man will be accomplished and the mode and manner by which justice is wrought is a matter of no earthly importance to us."

Let us see now. There is not a lawyer in the state who is not interested in all of the decisions of the Supreme Court that are of any importance in their character, and who shall be heard to say that any decision of the Supreme Court that carries with it life and liberty or property, is not a matter of importance. And then here is another important view of the case, one of

vital importance, too, as will be seen by a casual observation. Many hundreds of cases are carried to the Supreme Court because of certain alleged errors that have long ago been decided by the Supreme Court, and yet no mention is made of the reason. The ground is unknown and therefore it is that the case comes again and is again decided and comes again and again, because the bar of the state has not been informed of the decision of the Supreme Court, wherein the identical questions have been raised and determined.

I am not arguing for elaborate decisions and long treatises, but this argument is made to earnestly insist that when a question of any considerable importance reaches the Supreme Court of Ohio, and notably one that comes a second time, the reason of the court should be given for the benefit of the bench and bar of the state, to the end that the public may be informed of the views of the court.

Take our law books, take the decisions in the Circuit and Supreme Courts, and you will find the identical questions decided in diametrically opposite manner, or you will find that the same question has been brought up and disposed of by this hasty procedure in such a way as that nobody knows upon what ground it was decided, and hence the bringing of the case over and over again with the hope of having the same question determined in such way as to ascertain the ground upon which it is put.

It is a matter of surprise that in glancing through the decisions of the great courts of the United States, there is silence in the matter of citations of authorities from some of our states. This slipshod way of disposing of questions of vital importance does not tend to challenge the pride of the lawyer of the state whose supreme court is rarely, if ever, mentioned in the reports of the other great states of the country.

In the *North American Review* one of the great lawyers of the country discourses upon the subject which is in some degree commented upon here, and among other things it is there alleged that the "delay in the enforcement of criminal law is to

be found in the right of repeated appeals which are given in criminal cases." Then he complains that, "The rule which generally obtains in this country is that any error, however slight, must lead to a reversal of the judgment, unless it can be shown affirmatively that it did not prejudice the defendant." And further, he says, "The disposition on the part of the courts to think that every provision of every rule of the criminal law is one to be strictly construed in favor of the defendant and even widened in its effect in the interest of the liberty of the citizen, has led courts of appeal to a degree of refinement in upholding technicalities in favor of defendants, and in reversing convictions, that tenders one who has had practical knowledge of the trial or criminal cases most impatient." Illustrating the point of his argument and applying it to its practical results, he goes on to state: "In a case carried on error to the Supreme Court of the United States the point was raised for the first time in that court that the record did not show an arraignment of the defendant and a plea of not guilty; and on this ground the court, three judges dissenting, reversed the judgment." From all this and much more, the learned writer draws this conclusion: "There ought to be introduced into the statutes of every state, and of the United States, in regard to appeals in criminal cases, and indeed in regard to appeals in civil cases, a provision that no judgment of a trial court should be reversed, except for an error which the court after reading the entire record can affirmatively say would have led to a different verdict and judgment."

This is a most remarkable proposition, and the effect of it would be to substitute practically, and for all practical results, the reviewing court for a trial by jury, and is to a very large degree a substitution which would substantially set aside a trial by jury. For if the opinion of the court upon the evidence is to be taken to affirm the verdict of the jury, where a legal trial has not been had, it is not in legal effect a trial by the court and not by the jury? The same writer inveighs strongly against the right of appeal to courts higher than the court in which the

trial was had at first instance. There is force in this suggestion; to have one court of adequate authority would in all cases be open and available for a single review of the trial below, and then that court would put in writing the ground of its opinion and notify the bar and bench of the state the reasons for their reversal, or approval, of the decisions made on the trial. There would be no necessity, nor would there have been, up to date, anything like the number of criminal cases going up through the various courts that we have now.

A lawyer for the defense in county A is satisfied error has intervened in his case. He looks about him and while the very question may have gone to the Supreme Court, he can find no trace of the fact. Here are abundance of cases and in the highly interesting and thoroughly intelligent entry is found "motion denied;" "judgment of the Court of Common Pleas reversed." The counsel found themselves absolutely without any information as to the ground upon which the case went out, of the ground upon which the court refused relief.

The gist of this argument is that the trial of questions of error in the higher courts of the country should be always accompanied in the end by full information as to the decisions of the court upon questions of vital importance, and it is by no means a safe proposition to say that a mere technical error is not injurious, and was not injurious, to the defendant. The ruling of the court in the trial of a criminal case may be strictly technical, standing alone, but it may have had a vital effect upon the trial itself by reason of incidental effects that may have followed the technical error. So it is not safe to say that a technical error ought not to affect the verdict of guilty. There ought to be no errors in the trial of criminal cases. There ought to be no errors of judgment in the trial of a man's right to have liberty and justice. What is here being insisted upon, is that there shall be no errors. There is no necessity for it. When a state has reached a period of more than one hundred years in its administration of justice and criminal law, there isn't any reason to justify the presence in our records of blundering de-

cisions, and I maintain that the way to cure them is to have a definite understanding of the rulings of the courts in all cases, to the end that there may be uniformity.

What is here being pled for is uniformity of constitutional construction. Uniformity in the compliance with the Constitution that prohibits the trial of a citizen upon a charge involving felony without an indictment. What is here insisted upon is uniformity in the indictment itself; uniformity in the statement of the charge; uniformity in the compliance with the fundamental proposition of the Constitution that the defendant shall be notified of all of the facts necessary to be proved by the state; uniformity upon all the great questions incident to the charging, the trial, the conviction and the sentence of the criminal; and when that uniformity is reached by the decision of the courts and the decisions of the court are within the reach by the bar and bench of the state, then, and not until then, will these desirable results be brought about.

The cry of technicality is a dangerous cry. The suggestion that technical objections ought not to weigh in setting aside a conviction has no force when analyzed in the light of experience. In a recent case, carried to the Supreme Court of the United States, a conviction had been had in a lower court upon an indictment charging the defendants with the violation of an injunction. The injunction had been issued to restrain the defendants from terrorizing laboring men connected with a manufacturing industry. The indictment charged that the defendants did terrify and drive away a large number of the laborers employed in the work, but it gave no names, and the Supreme Court of the United States, by an opinion concurred in by eight of the judges, set aside the conviction and ordered the nolle of the indictment upon the ground, and the sole ground, that the indictment did not name the persons whom it was alleged had been terrified and driven away from the work. That decision would have come under the discussion of technical, and under the argument, to which reference has been made, it ought not to have weighed, for it was easy to say what difference did it make in the trial of

that case that the names of the individuals thus driven from their work was not given to the defendants. That would be considered a technical matter to those who inveigh against accuracy in criminal pleading, but, after all, under a constitutional provision that insists that every man shall be informed of the crime with which he is charged and shall have an opportunity to defend himself, such a proposition is in no sense technical, and such a defendant has no chance to defend himself accurately and perfectly, and such an indictment is clearly and absolutely in plain violation of the Constitution, where an indictment that does not charge all the facts that the government is compelled to prove in order to secure a conviction, is not an indictment and no slipshod decision of any court can ever make that an indictment which is not an indictment, under the plain interpretation of the Supreme Court of the United States of the constitutional provision relating to indictments.

And so, after all, the evils of the mal-administration of the criminal laws of the country does not lie at the door of the people who are willing and anxious for the preservation of the landmarks of constitutional liberty and justice, and the speedy trial of criminals and the certainty of conviction in all cases of guilt. The evils do not lie at the door of the bar, for there can be no wrong-doing by the bar that does not have at least its approval, directly or indirectly, by the action of the courts themselves. Delays in administration are in a large degree to be attributed to the confusion and the uncertainty of the exact character of the law itself as pronounced by the courts of the country.

TAXATION UNDER PROPOSED CONSTITUTIONAL AMENDMENT

ADDRESS BY MORISON R. WAITE, OF CINCINNATI

It is well understood by this audience that that constitutional provision which it is sought to have amended at the fall election is Section 2 of Article XII, which requires the enactment of laws taxing "by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money." It is this provision which compels the adoption in this state of what the economists call the "general property tax."

The Ordinance of 1787 imposed absolutely no restrictions on the taxing power. The only limitation on that power in the Constitution of 1802 was the prohibition against levying taxes by the poll. With only this one restriction in the organic law, the system of taxation in the Northwest territory and this state was a natural evolution until 1851, when the theory of taxation then reached was congealed into permanent form in the constitution of that year. Since then the legislature and courts have done their best to modify the intentions of the authors of the constitutional provision of 1851, but in spite of those efforts it remains a hindrance to the proper development of a taxation system, and the time has come when actual amendment is requisite.

The first taxes imposed in the Northwest Territory were levied upon the inhabitants by assessments in proportion to their ability to pay, having regard to the yearly value and profit of their persons and estates, and also with due regard to the poor and indigent. Unsettled and unimproved tracts of land were at first exempted. This form of tax—a faculty tax—meets the requirement that taxes should be proportioned to ability to pay. It is unsatisfactory, because of the power in the hands of the

assessor to whom is left the duty of determining relative ability. A short experience with this form led to a tax on property and business licenses.

In 1799 came the law levying a territorial tax on lands, which were divided into three classes, and were assessed by act of legislature, the first at 85 cents, the second at 60 cents and the third at 25 cents per hundred acres. This remained the method of taxing lands for territorial and state purposes until 1825. The rate of these assessments upon the several classes of land varied from time to time, reaching as high as $3.75 a hundred acres.

In the same year, 1799, a system for raising county levies by taxes on specific property was commenced by providing for taxes at specific rates on horses and cattle above three years old, bond servants, on houses, town lots, and water and wind mills, according to their value; together with a tax on those bachelors not having property, and with licenses on retailers of merchandise and the owners of ferries. Taverns had been licensed from the earliest time. Gradually other occupations were licensed, peddlers in 1814; auctioneers in 1818; lawyers and physicians in 1825; public shows in 1827.

In 1825 for the first time was passed an act providing for a grand duplicate of taxable property, on which both state and local taxes were levied at ad valorem rates. It covered horses, mules and cattle above three years old, and pleasure carriages, the capital of merchants and exchange brokers, and all lands, town lots, all dwelling houses, warehouses, storehouses, shops and offices, all to be valued at their true value in money except the horses and cattle, to be entered without view at a fixed value in money per capita. Mills and factories were especially exempted from taxation.

In 1831 first appeared intangibles as a subject of taxation; in that year there were added to the objects of taxation on the duplicate money loaned at interest, stocks or capital invested in steamboats, also mills and factories, theretofore exempt. No

provision was yet made, however, for the taxation of the stocks, machines and tools of manufacturers.

Then, in 1846, came the general property tax law, of which Hon. Arthur Kelley was the author, and aimed to subject to taxation, at its true value, all real and personal property, including money or moneys and credits, but with certain liberal exemptions. All claims against the State were exempt, which language covered, of course, state bonds. Pensions, salaries and wages were exempt; so were credits not over six months for property sold or work done, household furniture to the extent of $100 and the furniture of tavern and boarding house keepers to the extent of $200, and also the wearing apparel of all persons, and articles of food. So also were all farming implements, mechanics tools to the amount of $150, and one cow, eight sheep, four hogs, crops of a farm within one year of the gathering and fleece of sheep within six months of the shearing. Manufacturers were allowed to deduct $150 from the value of their machinery, and their stock was taxed at cost of raw material.

This was the act which, with certain minor exceptions, was in force at the time of the adoption of the Constitution of 1851.

What Section 2 of Article XII of the Constitution meant to the contemporaries of that time is seen by an examination of the early cases of the Supreme Court, construing that and the other provisions of the Constitution relating to taxation. The leading case is that of Exchange Bank of Columbus vs. Hines, 3 Ohio State, 1. Chief Justice Bartley said, at page 11:

"An unequal and unjust system of taxation prevailing in this state, was one of the most prominent causes of the call of the late constitutional convention, and of the adoption of the present state constitution. And in the formation and adoption of the Constitution, the principle of taxation must be just and equal in its operation, was very fully discussed and considered. It was conceded on all hands that the levying of taxes by the poll was oppressive, and should be prohibited; and *property* was made the sole basis of taxation."

Incidentally, he said that a franchise was not property and therefore could not be taxed. He also said:

"It must be conceded to be exceedingly difficult, if not wholly impracticable, to devise any system of taxation which shall be perfect in the *equality* and *fairness* of all its burdens. But the principle adopted and established by the constitution is certainly the only one which admits of an approximation to such a standard. This provision requires *all property* of every description in the state, to be taxed by a *uniform rule* and *at its true value in money,* with the exception of certain enumerated exemptions, in favor of charity, religion, the burial of the dead, and public interests. * * * The language of the Constitution authorizing the tax upon the property of individuals is substantially as follows: *Laws shall be passed taxing all the property of every description, belonging to individuals, excepting that personal property, to an amount not exceeding* $200 for *each individual, may by general laws be exempted from taxation.* This imperative requirement of the Constitution, that *all* property should be taxed is not to be evaded by any circuity or indirection."

Judge Thurman, in a concurring opinion, used language equally positive. One of the objects of the constitutional provision was, he said, "To designate the basis of taxation to be *property*—property alone—and all the property of the State."

It was accordingly decided in that case that the provision of the law of 1842 which admitted the deduction of debts from the moneys and credits of individuals was contrary to the Constitution, whether the deduction be made from either money or credits; that such provision was void and must be ignored, and hence the sections relating to the assessment of banks permitting no such deduction, were not unequal and were in accordance with the constitution.

The view above quoted from Chief Justice Bartley's opinion, that property was the sole basis of taxation and that all property was to be taxed by a uniform rule at its true value in money, was emphasized in the later opinions of the court. In

the case of Zanesville vs. Richards, Auditor, 5 Ohio State, 590, at page 592, Judge Ranney said:

"The public burdens are made to rest upon the property of the state. * * * Without express authority of law, no tax, either for state, county, township or corporation purposes, can be levied; and we see no reason to doubt that this section of the constitution is equally applicable to, and furnishes the governing principle for all laws authorizing taxes to be levied for either purpose."

In the case of Hill vs. Higdon, 5 Ohio State, 243, the court determines, though with much doubt and serious difficulty, that legislation authorizing cities and villages to levy special assessments for improvements on streets, in proportion to special benefits, is not repugnant to that provision of the constitution now under consideration. But it was said that "this second clause of the twelfth article has established the principles upon which all taxes for general revenue purposes can be levied."

From this view of the constitution and the literal interpretation of its provisions, the legislation of the state has widely departed, sometimes supported by judicial interpretations; sometimes by popular acquiesence in laws supposed to be unconstitutional.

The legislature has never acquiesced in the decision that debts could not be deducted from credits, and notwithstanding the decision, the statutes of the state have always permitted such deductions.

Instead of taxing all investments in joint stock companies, the legislature has only required taxation of investments in such joint stock companies and corporations as do not themselves pay taxes upon their capital stock in Ohio.

In Exchange Bank vs. Hines, all the judges were unanimous that under the Constitution banks were not to be permitted to deduct their debts from their moneys, credits, and other property, but that the same were to be taxed without deduction, in accordance with the express provisions of Article XII, Section 3. But for very many years banks have only been re-

quired to pay taxes upon their capital stock and surplus, which is arrived at by a deduction of liabilities from assets.

The building associations of the state have been exempted since 1889 from listing and paying taxes upon their credits invested in mortgages. In 1904 the legislature exempted investments in the stock of any corporation, organized under the laws of Ohio, whether the same be taxed on its capital stock in Ohio or not, and in the stock of foreign corporations two-thirds of whose property is taxed in Ohio and who comply with certain laws of this state. Freight lines and equipment companies and sleeping car companies seem no longer required to return for taxation their cars and equipment and other personal property within the State of Ohio and be taxed thereon at the uniform rate provided for other property, but in lieu thereof, pay an excise tax of one per cent. upon the proportionate value of the capital stock of the company representing the capital and property owned or used in Ohio.

While, on the one hand, the legislature, supported by public sentiment, has granted exemptions in addition to those provided for by the constitution, on the other hand, it has found sources of taxation other than property, which have been held by the courts not to be controlled by the foregoing clause of the Constitution. In spite of the repeated declaration by the judges that property taxed by a uniform rule, was the sole source of general revenue, it was very early found that such statements too narrowly construed the power of the legislature. The case of Hill vs. Higdon, upholding the authority of municipalities to levy special assessments for improvements, has already been referred to. This was followed by Reeves vs. Treasurer of Wood Co., 8 Ohio State, 333, holding that such power of assessment existed for townships as well as municipalities, that the power to levy taxes was in the general grant of legislative power, and that Section 2, Article XII, was not a grant of power but a limitation thereon.

In the case of Baker vs. City of Cincinnati, 11 Ohio State, 534, it was held that licenses of shows and performances, and

impliedly that licenses of other occupations, did not constitute taxation upon property, and that Article XII, Section 2, was a limitation solely upon the taxtion of property. In later years this principle has sustained taxation of various subjects, from which the largest part of the state revenue is now derived, namely, taxation of franchises, various forms of excise laws, or taxation of the privileges granted to corporations of doing business in this state, taxation of the privilege of inheritance, and the taxation of the business of dealing in intoxicating liquors and of trafficking in cigarettes, all of which may be and are taxed without regard to the uniform rule, because such taxes are held not to be taxes on property, and Section 2 of Article XII has, therefore, no application.

The legislature, however, is controlled by the Constitution in levying these taxes on non-property subjects. As said in Southern Gum Co. vs. Laylin, 66 Ohio State, 578-594: "Government is instituted for the equal protection and benefit of the people. Section 2 of the Bill of Rights. Private property shall ever be held inviolate, but subservient to the public welfare. Section 19 of the Bill of Rights. These provisions of the Constitution are implied limitations upon the power of taxation of privileges and franchises, and limit such taxation to the reasonable value of the privilege or franchise conferred originally, or to its continued value from year to year. * * * These limitations prevent confiscation and oppression under the guise of taxation, and the power of such taxation can not extend beyond what is for the common or public welfare, and the equal protection and benefit of the people; but the ascertaining and fixing of such values rests largely in the general assembly, but finally in the courts."

Such is a very brief outline of the development of taxation in this state. Beginning with a faculty tax in 1792 and 1795, that is one not bottomed on property but on the ability of the taxpayer to pay, it passed to a tax on real estate and horses and cattle, with licenses on certain occupations, a system well adapted to a community, largely homogeneous as far as property was

concerned, and widely scattered, so that the administration must necessarily have been very simple. With the development of other forms of property and other occupations than those of the farmer, storekeeper, peddler and tavern-keeper, there was a gradual extension of the tax law to cover these new forms of property and occupations, each untaxed and thus encouraged at the outset, but as they grew in importance put on a basis of taxation with other forms of wealth.

The next step was the idea of taxing all forms of property by a uniform rule at its true value in money. At that time all forms of property were practically visible. The condition of nearly all men was known to his neighbor, and it seemed wise to the members of the convention of 1851 to fasten this idea of equality into a permanent law of the Constitution.

During the fifty-seven years experience with that constitutional provision, there has been a growth of population, wealth, and particularly of the intangible forms of wealth, of which the adopters of the Constitution could scarcely have dreamed. It has been accompanied on the one hand by a fall in the returns from investments and for the use of money, and on the other hand by a tremendous increase in the needs of government and consequent increase in the rate of taxation, so that for many forms of investment in many localities the one is the equal of the other. This has compelled the lawmakers to seek other sources of taxation, to ignore as to them the rule of uniformity, and to exempt from taxation by uniform rule and at its true value in money, some forms of property that are strictly within the purview of the constitution.

Accompanying the gradual departure from the original spirit of this constitutional provision on the part of the lawmaker, there has been developed among the people of the state a spirit of dissatisfaction with that provision of the Constitution, just as a like dissatisfaction has grown up in the other states of this country, most of which have been afflicted with a similiar constitutional provision. It has been found in Ohio, just as in other states, that the general property tax, however beautiful

and equitable it may be in theory, failed utterly to fulfill the expectations upon which it was founded.

Repeated attempts have been made to amend this provision of the Constitution by conferring upon the legislature the power to classify the objects of taxation. Such an amendment was proposed and voted upon in 1889 and another in 1903. In 1891 and 1893 amendments were proposed to give the legislature power to tax rights, privileges and franchises in addition to the taxation of property. All these amendments failed of adoption by the people under the provision of the Constitution requiring a majority of all votes cast at the election to be in favor of the amendment, although at each election, except the first, there was a larger vote in favor of the amendment than against it; and the majority of votes cast on the constitutional question in favor of the amendment has constantly increased. In 1903 there were 326,622 votes in favor of the amendment and but 43,563 cast against it. In 1905 an amendment was passed exempting state and municipal bonds from taxation.

In addition to the dissatisfaction expressed by these votes in favor of amendment, Ohio has had two commissions appointed expressly for the purpose of considering questions of taxation, one in 1893 and another in 1907. Both of these commissions have condemned in no uncertain terms this provision, Section 2, Article XII, of our Constitution. The attitude of these commissions toward such a constitutional provision is the same as that taken by political economists generally, and by the many tax commissions appointed by other states.

The Tax Commission, in its report of 1908, as its first recommendation, again urged the amendment of this clause. So far as it is necessary to consider it now, the Commission proposed the following amendment: "The General Assembly shall have power to establish and maintain an equitable system for raising state and local revenue. It *may* classify the subjects of taxation so far as their differences justify the same in order to secure a just return from each. All taxes and other charges shall be imposed for public purposes only and shall be just to each subject. The

power of taxation shall never be surrendered, suspended or contracted away. Bonds of the State of Ohio," etc. (enumerating other forms of bonds and exemptions as now), "may by general laws, be exempted from taxation. * * * "

Pursuant to this recommendation, a joint resolution was passed by the legislature proposing to the people an amendment to Section 2 of Article XII, in the form recommended by the commission, to be voted upon next November.

The passage of the proposed amendment will leave in force various checks upon the legislature. The prohibition upon poll taxes remains, as well as the third section of Article XII, requiring banking capital to be taxed in proportion to the property of individuals, and Section 4 of Article XIII, providing that the property of corporations shall be subject to taxation the same as the property of individuals. Those sections of the Bill of Rights, to which attention has already been called in the quotation from the Southern Gum case, also remain in force. The action of the legislature is now subject to the veto power of the governor, to be exercised in cases of injustice. The amendment does not require classification; it is only permissive in form. When classification is made, it can only be such as the subjects of taxation justify in order to secure a just return from each, and the taxes imposed must be just to each subject. It will not be possible for the legislature to surrender, suspend or contract away the power of taxation. State and municipal bonds under the amendment will not be absolutely exempt, as at present. The legislature will be left to deal with them as justice may demand.

In 1851, when most forms of property were tangible and visible, when corporations were few and the investments of the citizens of the state in the various forms of securities were comparatively small, and when men knew the circumstances of their neighbors, there was a possibility for the equitable adjustment of tax laws in conformity with this provision of the constitution, which modern conditions make an absolute impossibility.

The commission, as part of its report, presents some startling facts in relation to the escape of personalty from taxation.

In spite of the fifty-five years of development unprecedented in the world's history of forms of personal property, especially of the investment in stocks, bonds and mortgages, the relation between personal property and real estate in the State of Ohio, as returned for taxation, remains practically the same as it did in 1852, and this in spite of the further fact that the real estate used by corporations is generally returned as personal property. In 1870 the proportion of personalty to real estate was highest. Then real estate paid 60.7 per cent. of all taxes, personal property 39.3 per cent. Now real estate pays 67.7 per cent. and personal property but 32.3 per cent. In 1870 merchants stocks returned for taxation amounted to $50,000,000; in 1906 they amounted to $38,000,000, a loss of 24 per cent. In 1870 manufacturers' stocks were returned at $20,000,000; in 1906 at $14,000,000, a loss of 30 per cent. In 1870 the value of all credits, after deducting bona fide debts, was $93,000,000; in 1906 they amounted to $77,000,000. The grand total on the tax duplicate of 1906 of all moneys, credits, mortgages, bonds, stocks and other intangible property was less than $150,000, although the bank deposits alone in this state aggregated $500,000,000. The moneys returned for taxation, including moneys on deposit, amounted to practically $60,000,000, less than one-eighth of the deposits of the state. The value of all credits returned in 1906 was $34,000,000 less than 1890, and $16,000,000 less than in 1870. The value of all stocks and bonds in the state as returned for taxation in 1906 was but $10,819,000, which was $2,500,000 less than it was in 1880. Eight counties returned as the investments of its citizens in stocks and bonds less than $2000 each. Two counties returned less than $1000, and one county returned $120. Preble county, with a population of 23,713, returned in credits $2,169,000. Hamilton county, with a population of 409,000, returned $1,676,000. Cuyahoga, with a pouulation of 439,000, returned $1,946,000. In stocks and bonds Mahoning county, with a population of 70,000, returned $1,072,000 for taxation, while Montgomery, with a population of 130,000, returned $455,000. Cuyahoga returned in such property twice as much as

Hamilton. The total of intangible personal property, that is, moneys in possession or on deposit, bonds, stocks, securities and credits, returned in Cuyahoga county in 1906 was $6,913,000, while Darke county, with a population of less than one-fourth of Cuyahoga, returned $3,165,000, and Preble county, with a population of about one-twentieth of that of Cuyahoga, returned $3,091,000. The next largest returns to those of Cuyahoga were Montgomery county, returning $5,824,000; Stark county, $4,686,000; Hamilton county, $4,434,000; Franklin county, $4,270,000. Lucas county returned but $1,271,000, which is only a third of that returned by Belmont and less than that returned by each of forty-four counties, smaller in population than Lucas.

These figures must convince any investigator that there is a wide-spread concealment of personal property within the state, and yet Ohio has fortified its method assessing personal property by the requirement of detailed statements, solemnly sworn to by the taxpayer, with power in the auditor and board of review to summon witnesses and increase the returns, and including as part of its system a tax inquisitor, paid contingently upon his success a high per cent. of the additions made by him to the duplicate.

The most stringent methods that will be tolerated by the free citizenship of this country have been tried in Ohio, with what results these figures show. They are not different from those obtained in the other states of the Union, nor indeed different from that formerly obtained in other countries, where a general property tax by a uniform rule has been tried, only to be abandoned. As it has been abandoned there, so must it be abandoned in this country. The movement in other states is well under way. Freedom to classify now exists in Maine, Massachusetts, Connecticut, Vermont, New York, Pennsylvania, New Jersey, Delaware, Maryland, Georgia, Wisconsin, Minnesota and Idaho. In Michigan, Missouri, Washington, California, South Dakota and other states, constitutional amendments are either now pending or are proposed, which will give power to the legislature to classify the subjects of taxation.

Among the evils of a general property tax, at least six may be briefly noted. First, is the lack of uniformity or inequality in assessment.

The variations in valuations between counties marks an injustice between the citizens of those counties in bearing their respective proportion of the state burdens. The discrepancies between the individual assessments, even more marked than the discrepancies between the average county assessments, marks the injustice between citizens of the same county in bearing the burden both of county and state. This inequality is quite marked in real estate assessments; but is true in much greater degree in the case of personalty, where each owner is his own assessor.

A second and great objection to the general property tax is the impossibility of reaching personal property by even the most stringent methods. The result is not only inequality between the owners of real estate and personalty, by which an undue burden is cast upon the owner of real estate, but also a greater inequality between the several owners of personalty, as a result of which those are penalized who least merit the penalty, namely, the honest and the unfortunate. Honesty results not simply in the bearing of taxation burdens which should justly be borne by him who makes honest returns, but the bearing in addition of the burdens of those who falsify their returns. The great injustice which the system works upon the unfortunate is that those whose estates are held and administered in trust, can not escape making true returns. The moneys, investments and credits of those are matters of public record, and can not be concealed. The estates of widows and orphans are compelled to bear not only their own appropriate burdens, but those of their shirking neighbors as well.

A third objection is that double and even treble taxation frequently results from this system. A transfer or sale of property for credit does not increase the wealth of the community one particle, but under the theory of the Constitution of Ohio, the tax duplicate is increased with every such transfer. The mere indicia of ownership of property, like certificates of stock,

are taxed, although the property itself is bearing the full burden of taxation wherever it may be situated, outside of the State of Ohio, and to that extent the owner's revenue decreased. That was true even in case of foreign corporation owning a considerable per cent. of property in Ohio and paying taxes thereon, if the whole capital stock were not taxed in Ohio. Insurance Co. vs. Ratterman, Treasurer, 46 Ohio State, 153. In 1904 the legislature relieved this situation to some extent by providing that if the foreign corporation pays taxes in Ohio on two-third of its property and otherwise complies with the laws of the state, the stockholder need not list for taxation his shares therein.

The fourth objection is one that is fundamental. It is not equitable to assess each form of property with the same rate of taxation. It is stated by the tax commission that the average rate throughout the country districts is about 2.05 per cent., and in the cities about 3.20 per cent. In Paulding county the average rate for the county was 3.99 per cent. In several taxing districts throughout the state the rate is over 6 per cent., and in many it is over 5 per cent. While the administrator may, by exercise of judgment, fix a low valuation on real estate, there is only one way of valuing money and stocks and bonds of well-known value. There is no room for judgment of their value. It is inequitable and unjust to require investments in bonds and stocks yielding from four to six per cent. to pay taxes at such rates as now prevail.

This leads to the fifth objection, that capital is not invited to the state, and is even being driven away. Thus not only does the state lose the capital which would make for the common good if invested here, but by driving away those who would pay moderate rates, the burden of the support of the state is made heavier on those who remain.

The sixth and most important objection to the general property tax is the temptation and inducement which it offers to dishonesty and perjury upon the part of the citizens of the state, and the contempt for law and for solemn oaths bred by the con-

stant disregard of the obligations under each. The tax commission in Ohio, in 1893, said: "The system as it is actually administered results in debauching the moral sense. It is a school of perjury. It sends a large amount of property in hiding." An Illinois commission asserted that the system is "debauching to the commonwealth and subversive of the public morals; a school for perjury permitted by law." The tax commission of New Hampshire says: "The mere failure to enforce the tax is of no importance in itself, considered in comparison with the mischief wrought in the debauching and demoralizing influences of such legislation." A Connecticut commission maintains that the resulting "demoralization of the public conscience is an evil of the greatest magnitude." The Ohio commission of 1903 says: "If the attempt to tax intangible property by the same methods as those which apply to other forms of property were a material benefit to the state, which it is not, instead of a material injury, which it is, such benefit could never compensate for the deplorable influence upon the moral sense of communities that results from the knowludge that false returns for taxation are made by citizens generally. * * * "

It seems conclusive that the system of taxation must be done away with and that the members of the Ohio bar should do their part in ridding the state of it, for upon them largely rests the responsibility for upholding the respect of the community for law and the obligations incurred in the making of sworn statements, and they also sustain the duty of protecting the estates of widows and orphans while under administration in the courts.

The principal reason for the failure of the present system to reach personalty and especially intangible personalty, is that, under the existing rates of taxation and existing returns upon securities, taxing such securities at the full market value amounts to practical confiscation. The legislature has recognized that fact in the exemption of building association mortgages from taxation. People will not pay a 3 per cent. tax on a security yielding a four per cent. income, or even 5 or 6. The

injustice of such a demand reconciles the conscience to a non-disclosure of the security. There is a point in the rate of taxation of all commodities at which the highest yield can be obtained. A higher rate beyond that produces a smaller income. The axiom is thus stated by David A. Wells, in his word, *Theory and Practice of Taxation*: "No tax should be levied, the character and extent of which offers, as human nature is generally constituted, a greater inducement to the taxpayer to evade rather than pay." He further says: "It is, therefore, a matter of the first importance for every government, in framing laws for the assessment and collection of taxes, to endeavor to determine, not only for fiscal but also for moral purposes, when the maximum revenue point in each tax is reached, and to recognize that in going beyond that point the government overreaches or cheats itself."

In this connection it is instructive to note that in Paulding county, where the tax rate is highest, the returns on intangible personal property are the smallest in the state; that the next smallest returns were made in Henry county, where there are six corporation and school districts, having a rate above 5 per cent., the average for the county being nearly equal to that of Paulding.

During the years 1866, 1867 and 1869, the United States government attempted a tax of $2 per gallon on distilled spirits. The evidences of fraud were so great and the revenue under the act so diminished, that in July, 1868, Congress reduced the tax from $2 to 50 cents, with the result that during the second year of the continuance of the new rate, the government collected $3 for every dollar that was obtained during the last year of the $2 tax. In the state of Connecticut, prior to January 1, 1889, bonds and notes were taxed from 1 to 2 or more per cent. on whatever could be found. Citizens were required to list such forms of property, as we are in Ohio. A very small per cent. of the duplicate was made up of such forms of property, which per cent. continually decreased. In 1855 such forms of property constituted 10 per cent. of the duplicate of the state.

In 1865 it was 7½ per cent.; in 1875 about 5 per cent., and in 1885 about 3 1-3 per cent. The legislature of Connecticut, in 1889, modified her former statute and provided that the owner of such bonds, who would register them with the state treasurer and pay in advance a tax of one-fifth of one per cent per annum, for five years, should be exempted from all further state taxation. Between the first of August, 1889, and the first of January, when the law went into effect, more than thirty millions of bonds and notes were registered, of which the treasurer, in his report to the legislature, says probably at least three-fourths had never paid any taxes whatsoever. In the next year thirty-three millions were registered. In the next year twenty-four, and in 1892, thirty-nine millions, indicating positively that a tax of from one to two per cent. is sufficient to tax out of existence the conscientious scruples of citizens against the violation of law and perpetration of fraud in respect to matters of taxation.

In the state of Maryland a law was passed providing for the assessment of the stock of foreign corporations and bonds at the full rate, for state purposes, to wit, 1.7 mills on the dollar, and a flat rate throughout the state for city and county purposes of 3 mills, making a total rate of .47 of 1 per cent. In the city of Baltimore, in 1896, the year before the operation of the new law, there had been returned for taxation six millions of the above securities. In the following year there were returned $58,703,000 of such securities; in 1907 this amount had increased to $150,947,000. This amount, it will be noticed, is greater than the returns on all forms of intangible wealth in the whole State of Ohio.

There are many who believe that all forms of double taxation should be abolished, including credits, investments in bonds and stocks, and even money, which as mere money in possession, brings in no returns, and if on deposit is a mere credit. Probably the people of this state are not ready for such a step. They ought to be able to see, however, that under the present system they have taxed such forms of property out of sight, and the only way they can be brought within reach is by lowering the rate as to them to one that is just.

So far as possible, all forms of intangibles should be reached at the source. If mortgages are to be taxed, let them be taxed when filed for record, and provide by law that it is illegal for such tax to be paid by the borrower, as is now the law of California. It will be argued that this will raise the interest rate by the amount of the tax. It is raised now by the mere possibility of tax much more than the smaller tax now suggested, without producing any countervailing revenue.

If money on deposit is to be taxed, provide for the payment thereof by the bank, to be charged by it against the depositor, a small percentage on the average amount of each deposit for the year. It will be necessary to take averages, lest business be disturbed by too great withdrawals on tax listing day. This may not appeal to bank depositors, but we should have some such law if deposits be taxed at all. Let us no longer expect payment from the perfect man, the "guileless fool," and from widows and orphans.

Provision can be made for the payment of the tax on Ohio held bonds of Ohio corporations by compelling payment of the tax by the corporation, to be deducted from interest, as is now done in Pennsylvania. Foreign held bonds can not be so taxed. The stocks and bonds of foreign corporations can not be taxed by Ohio at their source. Reliance must be had in respect to these securities, on the rate being low enough to induce honesty, except that an additional inducement for honesty might be had in a provison for registration on payment of the low tax, as in the case of mortgages in Connecticut, all unregistered securities being liable for the full tax on real estate, and for back taxes, as at present. As all such securities are liable to be publicly inventoried at death, and back taxes collected from one's heirs, it would seem reasonable to expect that by these means a very large percentage of such securities can be made to pay a reasonable tax.

These are examples of what can be accomplished by the classification of the subjects of taxation drawn from the experience of other states.

The time seems ripe for a comprehensive code of taxation in this state to be worked out by a commission, after careful study of the experience and systems of other states. Such commission should be permanent and adequately paid. The necessary labor and time to work out the details cannot be expected from temporary commissions, although much has been accomplished by the commissions heretofore appointed in this state. Many of the recommendations of the committee of 1893 have been adopted, to the great advantage of the state. The report of the last commission was a most admirable document and should be widely distributed and read. A permanent commission is one of its recommendations, but it is well nigh useless to appoint such a commission until the constitutional amendment is passed, and the way clear for a scientific treatment of the whole subject.

The present corporation tax laws of the state are in great confusion. They are undoubtedly unfair to some, while others escape their just share of the burden. This condition is only such as is to be expected from a development that has had to come, by seeking to tax the physical property by a uniform rule and to make up the shortcomings of such system of taxation by various expedients to reach the elements of value which escape under the property tax. This has made necessary the payment of at least two taxes and two separate returns by every corporation, and consequent increased expense to the state, besides confusion and expense to the corporation.

The diminishing returns of merchants and manufacturers, to which reference has been made, indicate the necessity of some reform. The taxation of corporations in other states has brought into prominence the rule or system of valuation of the business as an entirety, or the proportional part within the state, taking into consideration its physical assets, gross receipts, and the value of its corporate securities, arriving at the true value of the whole from such information. This plan has been applied in Ohio to express, telephone and telegraph companies by the Nichols law. As the valuation is based largely on the mar-

ket value of the securities, it includes all elements of value which the company has, including good will and the value of franchises. The application of the principle to public service corporations is quite familiar. In a few other states it has been extended beyond such corporations. In Connecticut, banks, trust companies and insurance companies are taxed 1 per cent upon the value so found, in lieu of a general property tax. In Pennsylvania the principle has been applied to all corporations other than manufacturing companies and banking and insurance companies. The rate is 5 mills on the dollar of the value of the whole capital stock of all kinds. The same principle is there applied to limited partnerships and joint stock companies. The interests in such companies are deemed to be capital stock and treated accordingly.

This principle of taxation seems to be an attempt to realize as to corporations the first of Adam Smith's canons of taxation: "The subjects of every state ought to contribute to the support of the government as nearly as possible in proportion to their respective abilities—that is, in proportion to the revenue which they respectively enjoy under the protection of the state." A tax on gross earnings, a favorite method of taxing public service corporations, and used in this state under the Cole law, is another effort to realize this maxim as to corporations. The general property tax ignores all ability to support the state, except that founded on the ownership of property. So long as this system is limited to those businesses, such as those of the public service corporations, which do not compete with enterprises conducted by individuals and firms, the tax is not unjust. The application of the principle to the ordinary trading and manufacturing corporations which do compete with individuals, without applying the same system to individuals, is unjust. This increased value of assets, in combination, over the same taken separately—the difference between the business as a going concern and taken piecemeal—does not depend on form of organization. The intangible elements of value constituting earning capacity or good will are as much present in the business of a partnership or in-

dividual as that of the corporation, and are as well taxable in the one case as the other. The corporation the more readily lends itself to the ascertainment of value. Pennsylvania, however, has blazed the way by bringing in limited partnerships which have no capital stock. In Pennsylvania the cash value of the capital stock must not be less than the average price for which the stock sold, or not less than the value indicated by the net earnings. I think we are likely to see a wider and wider adoption of this unit rule of taxation. It requires for its development, however, a repeal of the uniform rule provision of the constitution. To tax the value of business so ascertained at from 3 to 6 per cent. in this state, when in competition with those of other states, would be to kill the goose that lays the golden eggs.

When this ability to earn is taxed in business, there will come a demand for the taxation of the earnings of the professional and salaried man. Do not think that I have come to the demonstration *ad absurdum*. On the theory of government support, based on ability to support, which is now generally recognized as the correct theory of taxation, the professional and salaried man does not bear his share of the burden. An income tax, in theory, is the best of all taxes, but like the general property tax, it cannot be worked in practice where reliance for disclosure of income must be had on the man sought to be taxed. It is the difficulty of administration that will probably make this one of the last taxes to be resorted to. But when it does come, do not call it unjust.

I have been able, within the limits of this paper, to consider only a few points in a great subject. I trust that I have made it a little clearer that in the logical development of taxation in Ohio, the next important and necessary step is the removal of that obstacle to development, the general property tax requirement, and that such step, instead of increasing, would decrease the burdens on real estate by producing greater revenue from the intangible subjects of taxation. Above all is this step required to promote just and higher standards of morality and citizenship throughout the state.

UNIFORM LAWS BY INTERSTATE COMPACT

ADDRESS BY BEN W. JOHNSON, OF TOLEDO

The distinguished statesman (Mr. Bourke Cockran) who spoke this morning has made himself the Association's benefactor. The Association in turn has become the creditor of all its members by placing at our disposal his wealth of thought and eloquence upon an important subject. Not in any hope of discharging or satisfying my contributive share of our common indebtedness, but with a desire, at least partly, to compound for the liabilities which have been accumulating against me ever since I attended these meetings, and which were so largely increased this morning, I ask your permission to advertise some other accidents of the law, in addition to "The Law's Delays."

Not delay alone, but also uncertainty, instability, obscurity, complexity, or any other thing which impedes the efficiency of law, as it were, adulterates and may deny justice. An invention beautiful in design, symmetrical in all its proportions, would still be worthless, if the friction of the parts and the inertia of the machine should suffice to neutralize the motive power that must drive it. Justice is the motive of government, while government is but an inert mechanism invented to utilize the power of justice.

Speaking upon a high plane of speculative theory, Daniel Webster once likened our political system to the solar system, wherein each planet, like each state, follows its separate orbit about a central sun. "The music of the spheres" in this political firmament is sometimes discord where should be harmony, and it sometimes leaves silence where there should be utterance. The lawyer may worthily address himself to discover, if possible, a constitutional method for better attuning our laws to the needs and ideals of our people.

The interstate commerce clause, the doctrines of inherent, implied and incidental powers have been studied to the dregs in an effort to make government efficient by aggrandizing the central power at the expense of powers reserved to the states and to the people.

Nevertheless, there is a constitutional power expressly reserved to the states as a muniment for other powers belonging to them. As if foreseeing the possible need of such a provision, the creators of the Constitution embodied it in the last section of Article I. This neglected and half forgotten clause, while it prohibits any state entering into a treaty, alliance or confederation, permits the states, with the consent of Congress, to make any number of other compacts or agreements. They may, even without the consent of Congress, confer and negotiate together about their common interests. In fact, for seventeen years many of them have held annual conferences to promote uniformity of state legislation. Signs are not wanting that the public will further this movement, and even demand consent for their commonwealths to agree as well as to negotiate upon certain important general concerns.

Such a prospect is not inconsistent with state autonomy. Freedom of contract is liberty, not thraldom. Each party gains advantages equivalent to that which it yields. Otherwise the outlook would be dubious, for independence and diversity of state legislation are necessary in their place. Those who must abide local regulations can best determine them.

Delegated sovereignty must not travel too far from its original proprietors. Even a public policy good for all the states may be ascertained more quickly and more surely through concurrent state experiments, than through successive national experiments. A uniform public opinion may discharge itself, like a lordly river, as easily and more naturally through a delta of many channels than through one outlet. Indeed, as Ambassador Bryce remarks, the very division and subdivison and balancing of public powers in this country, instead of weakening, has rather tended to render homogeneous and omnipotent

the very public opinion that must animate any movement toward compacts for mutual and uniform action among the states.

Our fellowship of kindred minds has already evolved a system of laws and comities surprisingly harmonious under the circumstances. Legislatures imitate each other. Courts respect sister courts, and even sometimes accord them what is in effect a certain extra-territorial jurisdiction. The federal judiciary exerts a steadying and unifying influence. All this is much beyond what the Constitution exacts from any state. Good law proves contagious, as Robert G. Ingersoll once said health ought to be contagious.

Now, wherever uniformity and reciprocity of laws among the states is proper and possible without actual pre-arrangement, there public opinion will make the substance of the law uniform. But this does not answer the whole question. Democracies are expected, ever since Blackstone, following Montesquieu, pointed out their characteristic virtue, to succeed in "directing the end of a law," but lack skill to invent the means for achieving that end. Hence, whatever community of purpose the people impart to the laws of their several states, the paths pursued to reach the goal will diverge, and from time to time will deviate. Or, if this rambling tendency is on the way to be neutralized, there yet remains what may be called a residual diversity of enactment and interpretation; that is, a diversity affecting not the jural substance, but only legal forms and technicalities. These are the clothing of the law, not the law itself. They are accidents, not attributes. Respecting them the reigning public expresses no opinion and entertains none, while law-making assemblies and judges alike go each his own way; sometimes, as if in jealous assertion of authority for its own sake, supporting exquisite distinctions with subtle reasons.

Experts are the epicures of their specialties. They indulge their own tastes. Civilians worry themselves about the antinomies of the Roman law. Less philosophic and more sophisticated, the alumni of the common law school themselves to tolerate all workable inconsistencies. Year after year we in Amer-

ica go on hearing case law emitted in long, dogmatic quavers by some hundreds of courts, and statute law barked out biennially by some forty-five legislatures, to say nothing of a national Senate and Speaker of the House. We feel that the theme of one increasing purpose, and the harmony of means to end, runs through the deafening sonata, and we await the philosophy of events. Our motto is that of George Washington, "Exitus acta probat."

All this is very well, so long as the equal protection of the laws, and the common welfare of their subjects, are still conserved. Where, however, one and the same transaction may be effectuated, nullified, altered or even penalized, according to the forum into which it chances to be thrown, then diversity becomes oppressive. The law becomes, as it were, ambulatory. Legal auguries, instead of legal advice, must furnish the safe conduct of buying and selling, bequeathing and devising, marrying and divorcing, obtaining testimony and being taxed.

In relation to some subjects, the laws are not merely repugnant and uncertain. They are, in their circumscribed operation, impotent or hurtful. There are demands of the general welfare which neither a nation of enumerated powers, nor a state of limited extent can recognize and satisfy. These will assert themselves in time, either by amendment of the constitution, or by some usurping agency, or else by concerted action among the states..

Excluding all local, as distinct from general concerns, and excluding also concerns wherein the states acting separately may measureably achieve the ends of justice, interstate action seems an available means (1) to integrate a policy already uniform; (2) to effect a complementary adjustment in the exercise of powers partly delegated to the nation and partly reserved to the states or the people, and (3) to vitalize powers which have been neither delegated to the Union nor prohibited to the states, or some of them, in concert with each other.

If the field for interstate compact is thus limited, then some matters proposed as fit for uniform legislation would be more

properly left to the independent action of the states. Thus the substantive law governing conveyances of real estate, or descent and distribution, or the transmission of property by will, seems peculiarly a matter for independent state action. What were once novelties of legislation and construction on these topics are now, it is true, reduced to a classic uniformity, among the states inheriting the Anglo-Saxon legal tradition. The statute of uses, the statutes of mortmain, the laws against perpetuities, the fines and common recoveries once invoked to emancipate entailed estates, have all left their indelible mark upon our jurisprudence. This should not foreclose further experiments. At present, in the states governed by the principles of the Code Napoleon, there exists a still more far-reaching policy. Louisiana lawyers commend to other states her law touching the mutual property rights acquired by the husband and wife through marriage, and that leaving only part of a decedent's estate subject to bequest or devise, regulating the devolution of the residue by a statute of descent. Louisiana may be right or wrong, but that is her concern. And the other states which may be drawn to look for similar solutions of similar problems should enjoy the freest autonomy.

The case, however, is otherwise when it comes to the attestation and probate of wills, and the form and execution of conveyances, for these fall within the first, and at present most prominent purpose of interstate action, namely, to do away with accidental and formal discrepancies, where a common policy acts and reacts across imaginary state lines. The objections here are fewer, the advantages and the urgency of uniform alignment more obvious than elsewhere. The problem has already been assailed with a will, and pushed toward a solution.

Of the sixteen specified topics and sub-topics upon which Ohio has declared uniformity of laws important, four belong to this class in part, namely, private corporations, holidays, fire and life insurance, and marriage and divorce. Eight others are exclusively of the same sort, as follows: Bills of lading, negotiable instruments, partnership, trade-marks, warehouse receipts,

notarial certificates, execution and probate of wills and form and execution of conveyances. Of these all but the last three are branches of commercial law.

The law merchant was naturally the first to offer itself for uniform declaratory legislation. This wonderful system of rules imposes no affirmative restraints. It merely translates the "I will" of world-wide commerce, into the "Thou shalt" of a world-wide law. It was first the coöperative and voluntary usage of merchants. Herein, as elsewhere, the mercantile class has shown its members the true cosmopolitans and most efficient civilizers. They invented, in that they made necessary, also the mariner's compass, the locomotive and the telegraph.

It is noteworthy that the progressive races owe three essentials of their civilization to three branches of the Semetic race; letters to the Phoenicians, numbers to the Saracens, and instruments for commercial intercourse to the Jews. The children of the patriarchs and the prophets have always kept their heads above the particulars of life. They have still kept their feet on the ground. Their perceptions have inspired the proselyte, and informed the evangelist of trade. Their sense of the ever-enlarging community and interdependence of mankind has been an intuition, subordinating each part to the whole, family, clan, people, world of men.

And so the mercantile genius of the Jew, in the turmoil of the middle ages, quietly generated a universal custom, for which judges have invented a universal law. The glory of the greatest jurists, as of Lord Mansfield and Justice Story, is that they recognized this unique pre-eminence of the law merchant.

Its rules originated in convention, in a "coming together" of those engaged in trade. They are artificial. They are the algebra of commerce, as legal tender acts are its arithmetic. They simply sanction the meaning which merchants have attached to the symbols of their transactions. The form of a promissory note, for instance, matters nothing. It might as well be "I. O. U.," so long as the execution, delivery and transfer of it entail definitely understood consequences, uniform throughout the em-

pire of exchange. As C. J. Willes, in a leading case 132 years ago (Lockyer v. Offley, I T. R., 259), says:

"In all commercial transactions, the great object is certainty. It will therefore be necessary for the court to lay down some rule, and it is of more consequence that the rule should be certain than whether it is established one way or the other."

Although conceding the competence of state courts, the United States courts have not followed them, but have searched the judicial archives of the world for uniform rules. What I have called residual variances have deflected the unifying trend, notwithstanding the common usage, the common demand for uniformity, the attitude of the federal judiciary. These variances often made commercial dealings the sport of chance. They ensnared and hampered business intercourse, the more it grew in volume and complexity.

In the later 70's lawyers and judges generally took home the prophetic words of Mr. Duane, uttered a half-century before: "Our true course is * * * by degrees, to make our laws more uniform and natural. * * * We only want a general efficient plan, supported with energy and national feeling."

Partly to devise such a plan, and to apply it in the unification of law, the American Bar Association was founded in 1878. Happily, the New South, vivified by a new commerce, was in the van of the movement. In 1882 a Tennessee attorney, before the Bar Association of that state, proposed a substantial merger of the federal and state systems. This was significant, if not practical. In 1886, the first practical proposition came with a circular from the Alabama Bar Association to like Associations in the other states, calling for conference upon the subject.

Meantime, in 1882, Great Britain, followed by her forty self-governing colonies, furnished a working model and a mild reproach to the American state sisterhood by adopting Judge Chalmers' pioneer Bills of Exchange Act.

In 1891, under the hegemony of the great commercial state of New York, commissioners from six states actually met to

shape and recommend uniform legislation. Ambitious in their hopes, but modest in their first proposals, they sought to abolish days of grace and some other anachronisms. But they clearly saw and declared the "most urgent need" of uniform rules affecting directly the business common and co-extensive with the whole country. They remarked the perplexity, uncertainty and confusion hindering trade, occasioning insecurity of contract, together with needless litigation and miscarriages of justice. In 1890, Mr. Henry Tompkins, of Montgomery Alabama, in 1892, Mr. Wm. L. Snyder, and next year Mr. John Randolph Tucker, of Virginia, recurred to the charmed subject. "Though we be distinct as the billows," said Mr. Tucker, "let us be one as the sea. We cannot enforce, but may well hope to induce uniformity in many important matters." But how to induce it was the difficulty.

As is well known, the difficulties were brilliantly overcome in 1896 by a code founded on the Chalmers' Code, which is now law in most of the states and territories, including Ohio, and in the district of Columbia.

The annual conference of state commissioners itself now represents nearly all the members of the Union. In 1898 Ohio joined temporarily, and again in 1902, by a permanent act. This act authorized a board of three commissioners on uniform laws, and munificently provided $500 a year to support their work. Needless to say, these eminent men have contributed to the conference that weight which the sons of Ohio always lend to national councils, whether of law or politics.

Since the Negotiable Instruments Act, the work of codification has concerned itself with other rubrics of commercial law, some complete, some in preparation. Two of them, regulating Bills of Sale and Bills of Lading, have just been adopted in Ohio.

It is no disparagement of the services rendered by this body, the Tribonians of the American people, to point out the limits of their influence. The negotiable instruments code, though only twelve years old, has already passed through various courts, and

has come out diversified in several of its features. The president of the conference, Mr. Amasa Eaton, of Rhode Island, was led to lament a short time ago, that "However clear the statute, there is an unfortunate tendency of the courts to fall back to the old law."* He might have added, no human language can be absolutely accurate and clear, and if courts have already disagreed in clear cases, much more will the variance develop in those which are doubtful. There will be no lack of such cases. The fact is illustrated by adjudications touching the anomalous or irregular endorser. Mr. Tompkins, to whose paper I have already referred, emphasized that the irregular endorser was, in the days of the uncodified law, neither fish, flesh, nor good red herring. Like the bat in the fable, he was a bird or a mouse, according to the place where he alighted. He was here a guarantor, there a joint maker and yonder an endorser, or perhaps a second endorser. The Code seems to define him as "an endorser," and to set out the specific rights and liabilities of an endorser. Yet the Circuit Court of Clark county, in this state, found him otherwise, without any hesitation. It is true, the losing party went to the Supreme Court, where the lower decision was reversed, and the law of Ohio fixed in harmony with the weight of authority. Yet the outcome must be ascribed rather to good fortune than to the compelling clearness of the Code itself. We may safely conjecture that in no long time all varieties of construction will be thriving over the smooth statutory surface. Courts will not lay themselves open to the criticism which a mountaineer once made upon James Russell Lowell, that he was "a monotonous speller."

The wider the field covered by codification, even the codification of forms and technicalities, the more numerous will be the ultimate variations from the parent type. Witness the infinite variety of practice in the one State of New York under her minutely codified procedure. The courts who are to complete the

*Mr. Eaton is understood, upon more recent and numerous cases, to be of the opinion that the courts now pretty generally tend to observe the principle of uniformity.

lofty tower of uniform law will fall into a babel of tongues and dialects.

What may be done to remedy, or, forestal such impending divergences. So far as the commercial codes are concerned, no objection appears to the states, agreeing, with the consent of Congress, to yield to the federal courts, or to a tribunal vested with competent jurisdiction, the adjudication upon appeal, of all controversies involving the construction of these acts. Such a compact would imperil no substantial rights. Merchants, bankers, warehousemen and common carriers want and need real uniformity, not a uniform point of departure. The mischief is not limited to particular parties or controversies in litigation. For every adjudicated case, there are many disputes, and for every transaction risked under a doubtful jurisprudence, a multitude are thwarted. The battle won for uniform legislation is not the war, and the victory may prove unfruitful unless followed by a successful campaign for uniform interpretation.

Within limits as to subject-matter, and with the consent of Congress, all the resources for consummating international negotiations and for erecting international tribunals are open to the states. They will not lack for precedents. The self-governing colonies of Great Britain, which now enjoy greater independence than the states of the Union, esteem it an advantage that the Law Lords may determine the construction of laws which require that finality. The republics of Central America have created a tribunal common to them all, and they have vested it with an international jurisdiction. The Hague Tribunal, suggested directly by the American movement toward uniformity, rests its jurisdiction entirely upon compacts among sovereignties. The intimacy, the national identiy, and the interwoven interests of the United States would seem to recommend strongly, in some cases a submission to federal jurisdiction, and in others to a proper interstate tribunal, permanent or occasional, of controversies involving rights and interests that transcend state lines, yet escape federal jurisdiction.

A second occasion for concert among the states arises upon transactions, also chiefly commercial, about which Congress may

legislate in regulating interstate commerce, and performing other national functions. But congressional legislation to have its perfect work must be supplemented by co-operative state legislation. The Ohio statute prescribing the field of the commissioners on uniform state laws, mentions the regulation of private corporations, unfair competition, pure food, insolvency and uniform hours of labor. The national safety appliance act, the employers liability act, and the interstate commerce act may be cited in furthering illustration. All should have their complementary laws regulating commerce within the several states. And not only so, but such complementary laws should be as nearly uniform as consistent with domestic policy. The regulation of interstate commerce was a chief internal reason for the present Constitution. But harmonious regulation within, as well as between, the states is equally desirable.

In this same connection is suggested the well-known *casus omissus* of the Constitution, whereby, although the federal government is held responsible by foreign powers for the protection of aliens in the United States, yet the sovereign states, upon whom devolve the duties of furnishing that protection, are not answerable in such case to any power. This condition has bred frequent embarrassments, and at the time of the Mafia lynchings brought us to the verge of war with Italy. Our government at Washington sedulously disclaims responsibility, but volunteers indemnity. Nevertheless international law, which is the world's sense of right and justice, does not serenely tolerate the spectacle of a civilized state holding itself irresponsible for the lives and property of citizens of foreign states. We may not always buy peace with a gratuity, but only at the price of international justice.

Interstate compacts, in the third place, may appropriately provide for the exercise of such powers, neither delegated to the nation nor prohibited to the states, as would be unjust or ineffective in their operation when wielded by the states separately without reference to each other.

Such a subject is the taxation of personal property, especially corporate property, by a uniform interstate rule, imposing the levy, either at the situs of the property, the place of doing business, or the place of corporate origin, and preferably the first, but at all events in not more than one of these places. Nor should delinquents be permitted to escape just taxation by refuge in a friendly state.

Another such subject is that of marriage and divorce. The interstate conference have undertaken in part to remedy the evils of migratory divorces, and to reform divorce procedure in other respects. A few states have followed their recommendations. But the results are as yet meagre. It is amazing but true, that a man may have wives in two adjacent states, cohabit with both, and still violate the law of neither state. The integrity of the family unit, the vital cell of the social organism, wherein lie the issues of the future, is of national and enduring consequence. Happily the sturdy morality of our people repairs the chaos and anarchy of our laws touching marriage and divorce.

Some legal private rights are becoming recognized as affected with a paramount public interest. The fathers deemed them immune from regulation. The power to protect such rights has not been delegated to the nation, and while not prohibited to the states, is utterly beyond the grasp of a single state to effectuate. This is partly because such rights affect equally and regardless of state lines, the people of the entire country. It is partly also because the states, disabled from shaping and insuring a common policy for the common benefit, adopt selfish individual policies at the expense of their neighbors.

There are unassailable state incorporation laws from which their parent derives all the benefit, while other states suffer all the inconveniences.

Industrial disputes loom large, to be met, on the one hand by merely negative judicial interdict, and on the other hand by settlements and arbitrations patched up through the personal influence of a party leader, or of a popular chief executive.

Again, to check the waste of our national substance in riotous living, and to express the contrition which hard times engender, another extra-legal conference is called, a conference of governors. The evil of irreparable waste is apparent. Prodigality must stop, notwithstanding, by the way, that these "national" resources are legally not national any longer, nor even public, but are private resources. The only suggestion for a remedy is that of Secretary Root, who drew attention to the feasibility of interstate compacts.

The Ohio statute for the promotion of uniformity of legislation takes cognizance of private corporations, unfair competition, and uniform hours of labor, as among the subjects for consideration. These things suggest some very live questions.

These are, or what is the same thing, the ultimate reigning power, the public, believes that there are mischiefs for which neither our nation nor any state is equipped to find a remedy. The federal powers tug and strain at the Constitution. The states glare at each other and at the nation. The judiciary obstructs with its absolute veto. Yet nothing is done.

Between New Jersey who fondles her numerous corporate offspring, and supports herself out of their hard earnings and winnings, and Texas who vainly waits at her borders for a chance to administer chastisement, there is an incoherent rout of states legislating, as it were, in each other's spite, and to the detriment in the long run of all.

All these and other questions of substantive policy, important, pressing, omnious, yet unsolved by any orthodox legalities, commend this obscured constitutional provision by which the several states may offer each other guaranties of concurrent and reciprocal action for their mutual and common benefit. The purpose to redress some of the imperfections of our system is astir. It will not be stayed or thwarted. Either we frankly make way by constitutional and orderly means, or our Constitution at last will stand in untenanted, majestic decay. In that event, our professional posterity would no doubt account for the United States of their time, as Roman jurisconsults once ac-

counted for their Empire by the fiction of a Julian Law, or ecclesiastical doctors for the paper sovereignty by the mythical Donation of Constantine and the False Decretals.

Such a vicissitude is remote. We have seen that our present political mechanism needs adjustment. To amend the Constitution at the cost of the last amendments, slowly substitute a government by men instead of laws, are alternatives out of the question. We have begun in a more practical, orderly way to supply the most urgent and obvious defects. The same way may be widened to a thoroughfare broad enough for our national progress.

To consummate interstate conferences by interstate compacts is natural and easy. Such compacts should not be irrevocable, of course, but should furnish guaranties against fitful and inconsiderate departures by the states which might become parties. The same public opinion which supports the bonded obligations of the states would sufficiently support their compact obligations. Merely "to raise a standard to which the wise and honest may repair" is worthy of patriotic statesmanship.

It is no valid indictment of our institutions to charge, albeit with too much truth, that they sometimes show the forms of law, without the substance of justice. This is only to say that our system is not yet perfect, or mature. It is one-sided. The present social type is unequally developed and suffers "growing pains." The remedy is not to disrupt the social system where it is well-developed, but to build it up where it is ill-developed. There must be not less but more coöperation. The ideal of our morality and the ideal of our commerce, must be applied to all our relations, and realized among our states. When the men of 1787 left a way open for interstate agreements, it was if their forbearance had been a vague prophecy. The Constitution may yet derive its chief safeguard from this neglected dispensation.

MORTUARY LIST

MORTUARY LIST

Name.	Became Member	Death.	Memorial.	Residence.
Adams, Perry M.	1889	August 22, 1891.	Rep. 13, 34, 155.	Tiffin
Allen, David A.	1898	August 10, 1898.	Rep. 20, 34, 52, 245.	Newark
Angell, E. A.	1890	July 4, 1898.	Rep. 23, 29.	Cleveland
Ashburn, T. Q.	Ex-officio	January 17, 1890.	Rep. 11, 44.	Batavia
Atherton, Gibson.	Ex-officio	November 10, 1887.	Rep. 8, 187.	Newark
Barber, Col. Llewellyn.	1880	July 25, 1895.	Rep. 9, 285.	Columbus
Baker, William.	Original	November 17, 1894.	Rep. 16, 123.	Toledo
Baldwin, Charles C.	1889	February 2, 1895.	Rep. 16, 110.	Cleveland
Bartley, Thomas W.	Ex-officio	June 20, 1885.	Rep. 23, 31.	Cincinnati
Bateman, Warner M.	1891	October 4, 1897.	Rep. 19, 219.	Cincinnati
Bates, James L.	1880	May 2, 1895.	Rep. 11, 270.	Columbus
Beavis, Benj. R.	1880	March 4, 1884.		Cleveland
Beavis, William H.	1883	January 4, 1908.	Rep. 29.	Cleveland
Bishop, J. P.	Original	October 28, 1881.	Rep. 23, 31.	Cleveland
Black, Thomas F.		December 2, 1905.	Rep. 28, 47.	Mansfield
Boone, George B.		June 2, 1906.	Rep. 28, 49.	Toledo
Brice, Herbert L.	1898	May 23, 1902.	Rep. 24.	Lima
Brinkerhoff, Jacob.	Ex-officio	July 19, 1880.	Rep. 23, 31.	Mansfield
Buckland, Ralph P.	Original	May 27, 1892.	Rep. 13, 33, 205.	Fremont
Bunker, Henry S.	1881	March 21, 1900.	Rep. 21, 36, 208.	Toledo
Burket, Jacob F.	Original	October 9, 1906.	Rep. 28, 41.	Findlay
Burr, Chas. E.	1882	May 28, 1903.	Rep. 24, 284.	Columbus

Caldwell, Jas. P.....	1890	November 12, 1902.....	Rep. 24, 279.....	Jefferson
Campbell, J. V.....	1882	July 2, 1888.....	Rep. 9, 49 and 11, 288..	Eaton
Canfield, Delos W.....	Original	December 29, 1900.....	Rep. 22, 37, 173.....	Chardon
Carhart, Henry Clay.....	1880	April 17, 1893.....	Rep. 14, 29.....	Galion
Carper, H. M.....	1883	January 14, 1895.....	Rep. 23, 31.....	Delaware
Chamberlain, H. A.....	1881	February 18, 1884.....	....	Toledo
Clark, Milton L.....	1880	June 11, 1897.....	Rep. 18, 354.....	Chillicothe
Cleveland, James Harlan.	.....	December 24, 1906.....	Rep. 28, 46.....	Cincinnati
Cochran, Robert Henry...	1895	February 22, 1896.....	Rep. 17, 249.....	Toledo
Cobbs, Chas. S.....	1886	January 27, 1903.....	Rep. 24.....	Akron
Collings, Henry.....	1898	February 28, 1904.....	....	Manchester
Collins, James H.....	1898	January 9, 1904.....	Rep. 26, 212.....	Columbus
Collins, Francis.....	1880	August 31, 1892.....	Rep. 9, 137.....	Columbus
Collins, W. A.....	1882	April 2, 1891.....	....	Toledo
Colver, Elisha M.....	Original	September 24, 1895....	....	Sandusky
Conklin, J. S.....	1882	October 1, 1897.....	....	Sidney
Cook, Asher.....	1889	January 1, 1892.....	Rep. 13, 34.....	Perrysburg
Cooper, W. C.....	1895	June 29, 1902.....	....	Mt. Vernon
Cowan, Allen T.....	1883	June 21, 1891.....	Rep. 13, 33.....	Batavia
Culbertson, W. C.....	1889	December 22, 1894.....	Rep. 16, 147.....	Mt. Vernon
Critchfield, L. J.....	Original	February 19, 1896.....	Rep. 17, 233.....	Columbus
Cummings, J. W.....	1888	December 18, 1899.....	Rep. 21, 36, 213.....	Toledo
Cunningham, Theo.....	1883	April 14, 1889.....	Rep. 10, 43-46.....	Lima
Daugherty, M. A.....	1880	January 15, 1887.....	Rep. 8, 190.....	Columbus
Davies, Malcolm G.....	1902	October 12, 1904.....	....	Avondale
Day, D. W. H.....	1881	April 27, 1891.....	....	Bowling Green

MORTUARY LIST—Continued

NAME.	BECAME MEMBER.	DEATH.	MEMORIAL.	RESIDENCE.
DAY, LUTHER.....	Original	March 7, 1885.....	Rep. 23, 31.....	Ravenna
DEWITT, JAMES L.....	1890	October 11, 1890.....	Rep. 12, 49, 190.....	Sandusky
DICKMAN, FRANKLIN J....	Original	February 14, 1908.....	Rep. 29.....	Cleveland
DILATUSH, W. S.....	1888	October 2, 1895.....	Rep. 17, 231.....	Lebanon
DOWDALL, EDWARD J.....	1881	April 5, 1890.....	Rep. 23, 31.....	Columbus
DUNN, A. K.....	Original	April 29, 1890.....	Rep. 11, 47.....	Mt. Gilead
EDWARDS, J. M.....	Original	December 8, 1886.....	Rep. 23, 31.....	Youngstown
EICHELBERGER, GEO. M.....	1883	January 11, 1906.....	Rep. 28, 27.....	Urbana
ELLIOTT, HENDERSON.....	Original	June 24, 1896.....	Rep. 17, 219.....	Dayton
EWING, J. H.....	1902	May 21, 1903.....	....	Cleveland
FITCH, E. H.....	Original	September 9, 1897.....	Rep. 19, 121.....	Jefferson
FOLLETT, JOHN F.....	1881	April 15, 1902.....	Rep. 23, 170.....	Cincinnati
FORCE, GEN. M. F.....	1881	May 8, 1899.....	Rep. 20, 34 and 23, 31.	Cincinnati
FOSTER, EDWARD.....	1880	April 17, 1883.....	Rep. 23, 31.....	Bryan
FRANK, JOHN L. H.....	Original	June, 1903.....	Rep. 24, 281.....	Columbus
GAGE, D. W.....	1904	1906	Rep. 28, 27.....	Oberlin
GEDDES, GEO. W.....	1892	November 9, 1892.....	Rep. 14, 131.....	Mansfield
GERARD, C. W.....	1891	September 24, 1894....	Rep. 16, 40.....	Cincinnati
GILMORE, WM. J.....	Ex-officio	August 9, 1896.....	Rep. 18, 250.....	Columbus
GODDE, FRANK C.....	Original	November 29, 1887.....	Rep. 23, 31.....	Springfield
GOODE, JAMES S.....	1880	April 19, 1891.....	Rep. 12, 33-36, 37, 41...	Springfield

Goodhue, N. W.	1880	September 12, 1883	Rep. 23, 32	Akron
Godwin, Homer	Original	July 6, 1896		Sandusky
Green, Edwin P.	Original	December 23, 1894	Rep. 16, 127	Akron
Greer, J. T.	1881	March 26, 1904		Toledo
Gunckel, Lewis B.	1885	October 3, 1903		Dayton
Guthrie, E. A.	1892	July 12, 1893	Rep. 23, 32	Athens
Hall, Theodore	1898	June 17, 1905	Rep. 26, 228	Ashtabula
Hall, John J.	Original	September 4, 1897	Rep. 19, 223	Akron
Hamilton, W. B.	1880	September 23, 1887	Rep. 23, 32	Richwood
Hammond, Eli S.	Ex-officio	December 17, 1904	Rep. 26, 220	Memphis, Tenn.
Hanna, John E.	1883	August 30, 1894	Rep. 16, 137	McConnellsville
Hare, D. D.	1884	February 10, 1897	Rep. 18, 260	Upper Sandusky
Harris, Stephen R.	Original	January 15, 1905	Rep. 26, 196	Bucyrus
Harrison, Richard A.	Original	July 30, 1904	Rep. 26, 206	Columbus
Hathaway, Isaac N.	1881	January 30, 1901	Rep. 22, 177	Chardon
Hauk, G. W.	Original	February 9, 1884	Rep. 15, 131	Dayton
Haynes, George R.	Original	1908	Rep. 29	Toledo
Herrick, G. E.	1896	May 28, 1900		Cleveland
Hull, Linn W.	1890	May 27, 1905	Rep. 26, 223	Sandusky
Hurd, Frank H.	1896	July 10, 1896	Rep. 17, 225	Toledo
Hutchins, W. A.	1880	January 22, 1895	Rep. 23, 32	Portsmouth
Hoadly, Geo.	1881	August 26, 1902		New York
Hollingsworth, James W.	1898	September 3, 1896	Rep. 28, 23	St. Clairsville
Horton, J. D.	Original	September 14, 1882		Ravenna
Hunt, Samuel F.	Original	January 12, 1907	Rep. 28, 23	Cincinnati
Hunter, Samuel M.	Original	February 20, 1907	Rep. 28, 35	Newark

MORTUARY LIST—Continued

NAME.	BECAME MEMBER.	DEATH.	MEMORIAL.	RESIDENCE.
JEWETT, L. M.	Original	November 7, 1906	Rep. 28, 34	Athens
JOHNSON, W. W.	Ex-officio	March 2, 1862	Rep. 23, 32	Ironton
KEITH, MYRON R.	Original	August 14, 1893	Rep. 15, 30, 32	Cleveland
KENT, CHAS.	Original	July 9, 1888	Rep. 9, 45	Toledo
KENNON, WILLIAM.	Ex-officio	November 2, 1881	Rep. 23, 32	St. Clairsville
KING, RUFUS.	1880	March 25, 1891	Rep. 12, 38, 43, 47, 181.	Cincinnati
KOHLER, GEO. C.		March 14, 1908	Rep. 29	Akron
KRAMER, A.	1881	August 10, 1885		Oak Harbor
KRAUSS, WM. C. G.	1881	April, 1905		Ottawa
LAWRENCE, WM.	Original	May 8, 1889	Rep. 20, 236	Bellefontaine
LEE, JOHN C.	Original	March 23, 1891	Rep. 12, 29, 44, 46, 182.	Toledo
LEEDON, JOHN S.	1883	April 20, 1899	Rep. 20, 34, 247	Urbana
LEMMON, JOHN M.	1892	August 17, 1895	Rep. 17, 247	Clyde
LEONARD, J. L.	1890	September 3, 1895	Rep. 17, 241	Bucyrus
LOCKE, JOHN L.	1897	May 30, 1904		Cambridge
LONGWORTH, NICHOLAS.	1882	January 17, 1890	Rep. 11, 43	Cincinnati
LUTES, NELSON B.	1889	May 16, 1900		Tiffin
LYNCH, WM. A.	Original	1906	Rep. 28, 28	Canton
MARVIN, DAVID L.	1899	June, 1900	Rep. 21, 36	Akron
MASON, JAMES.	1860	January 5, 1885	Rep. 9, 43	Cleveland
MATTHEWS, STANLEY	Original	March 22, 1889	Rep. 10, 40, 43	Wash'ton, D. C.

McKee, Richard M.	1893	March 25, 1907	Rep. 29	Toledo
McKinley, Wm.	1880	September 14, 1901	Rep. 23, 65, Rep. 24, 258	Canton
May, Manuel	1890	June, 1903	Rep. 24, 294	Mansfield
McIlvaine, Geo. W.	Ex-officio	December 23, 1887		New Phila'lphia
McGuffey, John G.	Original	June 30, 1905		Columbus
McIntire, A. R.	Original	September 21, 1903		Mt. Vernon
McElhiny, J. W.	1887	October 5, 1900	Rep. 23, 37, 171	McConnellsville
McNeal, J. F.	1890	1907		Marion
Millikin, Thomas	1891	November 10, 1899	Rep. 23, 32	Hamilton
Moore, Col. Oscar F.	1880	June 24, 1885	Rep. 23, 32	Portsmouth
Melhorn, Chas. M.	1898	November 1, 1902	Rep. 24, 301	Kenton
Motter, Isaac S.		March 21, 1907	Rep. 29	Lima
Nash, George K.	Original	October 28, 1904	Rep. 26, 184	Columbus
Newton, Eben		November 5, 1885	Rep. 7, 68	Canfield
Nippert, Carl L.	1902	September 6, 1904		Cincinnati
Noble, Henry C.	1880	December 12, 1890	Rep. 12, 28, 50, 192	Columbus
Noble, Warren P.	Original	July 8, 1903		Cleveland
Northway, S. A.	Original	September 8, 1898	Rep. 23, 30	Jefferson
Odell, Morgan N.	1881	October 29, 1888	Rep. 10, 46-50	Toledo
Okey, John W.	Ex-officio	July 25, 1885	Rep. 6, 49-50	Columbus
Olds, Chauncey N.	1880	February 11, 1890	Rep. 11, 282	Columbus
Osborne, John R.	Original	July 5, 1897		Toledo
Owesney, W. A.	1880	April 18, 1886		Steubenville
Parker, George D.		1908	Rep. 29	Ashtabula
Patterson, J. C.	1894	March 21, 1905		Dayton

MORTUARY LIST—Continued

Name.	Became Member.	Death.	Memorial.	Residence.
Perry, Aaron Fife.....	1882	March 11, 1893.....	Rep. 14, 158.....	Cincinnati
Pike, L. H.....	1880	February 9, 1906.....	....	Toledo
Pillars, Isaiah.....	1880	September 13, 1895.....	Rep. 23, 30.....	Lima
Pinney, Orestes C.....	1904	March 23, 1905.....	....	Cleveland
Pomerene, Julius G.....	1894	December 23, 1897.....	Rep. 19, 227.....	Coshocton
Pomerene, J. G.....	1900	July 25, 1903.....	....	Cleveland
Pratt, Charles.....	Original	March 15, 1900.....	Rep. 21, 204.....	Toledo
Price, J. F.....	1881	August 8, 1887.....	Rep. 9, 44.....	Toledo
Ranney, Rufus P.....	Original	December 6, 1891.....	Rep. 13, 187.....	Cleveland
Read, Matthew C.....	Original	June 15, 1902.....	Rep. 23, 33, 175.....	Hudson
Richards Channing.....	1894	September 12, 1896....	Rep. 18, 241.....	Cincinnati
Rickenbaugh, Frank W..	1887	June 13, 1898.....	Rep. 19, 56-57, 231.....	Toledo
Ricks, A. J.....	Ex-officio	1906	Rep. 28, 23.....	Cleveland
Rohn, John K.....	1889	1900	Rep. 22, 175.....	Tiffin
Rouse, B. W.....	Original	July 20, 1894.....	....	Toledo
Sadler, E. B.....	1881	March 26, 1888.....	Rep. 23, 32.....	Sandusky
Sage, George R.....	Ex-officio	November 19, 1898.....	Rep. 25, 212.....	Lebanon
Sanderson, T. W.....	.....	January 26, 1908.....	Rep. 29.....	Youngstown
Scott, Josiah.....	Ex-officio	June 15, 1879.....	Rep. 7, 42.....	Bucyrus
Scott, A. W.....	1891	March 9, 1896.....	Rep. 17, 237.....	Toledo
Scribner, Chas. H.....	1884	February 28, 1897.....	Rep. 18, 245.....	Toledo

SCROGGS, JACOB	1881	March 23, 1897	Rep. 18, 235	Bucyrus
SHERMAN, HENRY S	1890	February 24, 1893	Rep. 15, 31, 121	Cleveland
SHERWOOD, WILLIAM E	1890	September 23, 1892	Rep. 14, 165	Cleveland
SLATTERY, JOHN A	1883	December 23, 1895		Cincinnati
SMITH, J. M	Original	May 29, 1902		Lebanon
SPENCE, GEORGE	1881	February 6, 1895	Rep. 16, 135	Springfield
SPALDING, RUFUS P	Ex-officio	January 25, 1907	Rep. 9, 143	Cleveland
SPRIGG, JOHN M	1885	August 29, 1886	Rep. 28, 40	
STULL, JOHN M	1899	January, 1906		Warren
SUTLIFF, MILTON W	Ex-officio	April 24, 1876	Rep. 22, 217	Warren
SWAN, JOSEPH R	Ex-officio	December 18, 1885	Rep. 5, 50	Columbus
SWAYNE, NOAH H	Ex-officio	June 8, 1884	Rep. 5, 42	New York
THOMAS, A. Z	1881	February 11, 1886	Rep. 17, 243	Ottawa
THOMAS, D. E	1891	May 6, 1896	Rep. 17, 245	Toledo
THOMAS, W. B	Original	September 12, 1886		Ravenna
THOMPSON, GEORGE K	1882	January 27, 1890	Rep. 11, 45	Cincinnati
THOMPSON, SAMUEL J	1882	October 14, 1895	Rep. 23, 32	Cincinnati
THURMAN, ALLEN G	Ex-officio	December 12, 1895	Rep. 17, 145, 211	Columbus
TILDEN, M. H	1882	February 23, 1888	Rep. 23, 32	Cincinnati
TOLERTON, E. W	1890	August 22, 1906	Rep. 28, 36	Toledo
TRAIN, A. W	1880	May 13, 1891	Rep. 12, 201	Zanesville
TYLER, JOEL W	Original	September 14, 1894		Cleveland
VAN FLEET, H. T	1880	November 28, 1891	Rep. 13, 32	Marion
WALD, GUSTAVUS H	1892	June 28, 1902	Rep. 23, 178	Cincinnati
WARD, GEN. DURBIN	Original	May 22, 1886	Rep. 9, 139	Lebanon

MORTUARY LIST—Continued

NAME.	BECAME MEMBER.	DEATH.	MEMORIAL.	RESIDENCE.
WATERS, OCTAVIUS.....	1881	July 8, 1886.....	Rep. 23, 32.....	Delta
WAITE, MORRISON R.....	Ex-officio	March 23, 1888.....	Rep. 9, 173.....	Wash'ton, D. C.
WAITE, RICHARD.....	Original	July 12, 1907.....	Rep. 29.....	Toledo
WAITE, EDWARD TINKER...	1880	December 23, 1889.....	Rep. 11, 289.....	Toledo
WELCH, JOHN.....	Ex-officio	August 6, 1891.....	Rep. 13, 31, 33, 209....	Athens
WELKER, MARTIN.....	Ex-officio	March 15, 1902.....	Rep. 24, 297.....	Wooster
WHEELER, T. W.....	1890	November 11, 1901.....	....	Toledo
WHITE, WILLIAM.....	Original	March 12, 1883.....	Rep. 6, 219.....	Springfield
WHITE, CHARLES R.....	Original	July 29, 1890.....	Rep. 12, 32, 36.....	Springfield
WHITE, HENRY C.....	1889	January 15, 1905.....	....	Cleveland
WILCOX, F. N.....	1899	September 20, 1904.....	....	Cleveland
WILDER, HORACE.....	Ex-officio	December 26, 1889.....	Rep. 11, 290.....	Red Wing, Minn
WILDES, GEN. THOMAS F...	1880	March 28, 1883.....	Rep. 32.....	Akron
WILLEY, GEORGE.....	Original	December 29, 1884.....	....	Cleveland
WILLIAMS, MARSHALL J....	Ex-officio	July 7, 1902.....	Rep. 24, 267.....	Columbus
WILLIAMSON, SAMUEL E...	Original	January 21, 1903.....	Rep. 24, 303.....	Cleveland
WOODBURY, HAMILTON.....	Original	June 19, 1895.....	Rep. 16, 141.....	Jefferson
WOOLF, A. J.....	1899	January 29, 1906.....	....	Youngstown
WRIGHT, JAMES E.....	1880	November 17, 1890.....	Rep. 12, 50, 184.....	Worthington
YOUNG, E. S.....	1882	February 14, 1888.....	Rep. 10, 82.....	Dayton